



**BONDED LABOUR:**  
**CONSTITUTIONAL PROTECTION AND**  
**JUDICIAL ACTIVISM**  
-A SOCIO - LEGAL STUDY WITH REFERENCE TO INDIA

**DISSERTATION**

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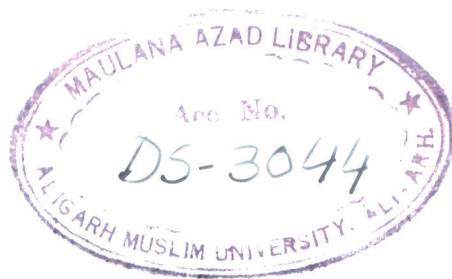
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## *CERTIFICATE*

This is to certify that *Mr. Abid Ali* has completed his dissertation entitled, "BONDED LABOUR : CONSTITUTIONAL PROTECTION AND JUDICIAL ACTIVISM - A SOCIO-LEGAL STUDY WITH REFERENCE TO INDIA", in partial fulfillment of the requirements for the award of the degree of '*Master of Laws*'. He has conducted the study under my supervision.

I wish him all success.

*(Mohd. Ishaque Qureshi)*  
Supervisor



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## INTRODUCTION

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In all societies a class of exploiters and a class of the exploited have always existed in one form or the other. Exploitation of one group of people by another is not a phenomenon existing only in the Indian Society. It is seen all over the world wherever social and economic inequalities exist. It is observed among the people belonging to the same or different cultural, racial and geographical setting who are in contact with each other involving the dependence of one on the other. Bonded labour or agrarian slave system in India is an age old system. It existed in one form or the other. It originates from the unequal hierarchical social stratification of Indian society in which social status of a strata had high and positive correlation with the economic status and political power. In the system bonded labour or the agrarian slave is subject to all kinds of restrictions and control of his master. Such a controlled person cannot do anything else other than what his master asked him to do. Economic disabilities of a group of people due to their low social status exposed them to their exploitation.

Traffic in human being and begar and other forms of forced labour were Prohibited by the constitution. This was one of the rights against exploitation incorporated in the chapter on Fundamental Rights in the constitution. The constitution makers by incorporating this prohibition as one of the Fundamental rights in the constitution had sought to ensure that the state shall take adequate steps to eliminate traffic in human beings, begar and any other forms of forced labour which were anti-thesis of a free and democratic society. Forced labour is prohibited in Article 23 of the constitution included within its ambit the age old system of bonded labour which existed in several parts of the country. Although in the past some attempts were made to deal with this problem at the state level by various states enacting legislation abolishing the system of bonded labour prevalent in one or the other forms. The concerted effort in this direction at the national level was made only in the middle of 70's. Abolition of bonded labour was incorporated as one of the objectives of 20 point programme launched by the then Government during the emergency . An ordinance was promulgated by the president of India in 1975 abolishing the bonded labour system in the country and making it a punishable offence. This Ordinance was replaced by the

Bonded Labour System (Abolition) Act 1976, enacted by Parliament which provided for the abolition of the "Bonded Labour System " with a view to preventing the economic and physical exploitation of the weaker section of the People.

The Act provided for the identification, release, rehabilitation of bonded labour and for the prosecution of those who offended against the provisions of the Act. The Act also provided for extinguishment of liability to repay bonded debt and prohibited any person from advancing any bonded debt or accept any payment against any bonded debt which has been extinguished. The District Magistrates were entrusted the task of identification, release and rehabilitation of the bonded labourers as well as to eliminate any other system of forced labour existing within their respective districts, Vigilance committees were provided for under the Act to assist the District Magistrates in this behalf. The Act also provided for conferring judicial powers on the executive Magistrates for trial of offences under the Act. Jurisdiction of Civil Courts was barred and the provisions of this Act were given overriding effect over all



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other laws. The burden of Proof that a debt which is claimed as a bonded debt is not a bonded debt, was shifted to the creditor. Finally the central Government was empowered to frame rules under the Act for carrying out the provisions of this Act, Jurisdiction of civil court was barred and the provisions of this Act were given overriding effect over all other laws. The burden of proof that a debt which is claimed as a bonded debt" is not a bonded debt, was shifted to the creditor. Finally the central Govt was empowered to frame rules under the Act for carrying out the provisions of this Act .

The Indian Constitution is a social document. The majority of its provisions are aimed at achieving the goals of the socio-economic revolution and the core of the commitment to the social revolution lies in the Fundamental Rights and Directive Principles of State policy.

Fundamental Rights and Directive Principles can be said to be an instrument of Social Justice as well as justice to Bonded Labourers through various Articles of the Constitution. According to Justice Bhagwati it

is plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release they must be suitably rehabilitated. The Bonded Labour System (Abolition) Act 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to insuring basic human dignity to bonded labourers. The Sincerity of our Supreme Court for the cause of bonded labourers as well as for the realisation of the Constitutional objectives. Ofcourse not only other court in our country but the Legislature and the executives, as well, must take note on this pronouncement. The whole legal division for the protection of bonded labourers, as well as for the eradication of bonded labourer system but at constitutional back-bone. Non it would be possible to carryout Socio-economic reforms of such people through constitutional justice. This will have a long way to go on the Indian National scene for the cause of weaker, depressed, down-trodden, destitute and even for the weakest in weak.

In this dissertation an attempt is made to inquire in to the true nature and various shapes which the bonded labour assume in our society. Further

an indepth study is undertaken of the various legislative and administrative attempts made for its eradication. This is done with the soul purpose of finding out the causes which have been responsible for the failure of the State in achiving the object indicated in the constitution. This enquiry is based on an examination of the statutory and decisional law beside the various documents showing the progress of the State efforts. The Role played by the Social-action groups has been of almost importence because they have been instrumental in bringing this evil to the attention of the state, the administration and the people generally by moving the Supereme Court on behalf of socio-economically weak sagements of Population through the medium of Public Interest litigation the favourable attitude of the Supreme Court has been instrumental in guiding the State in to action.

To Facilitate the present study the whole work is devided in deferencial chapters.

The Chapter -I deals with the Bonded labour System and its Facets dealing with meaning and different

names of the bonded labour system with historical background , reasons of prevailing bonded labour system, kinds of Bonded Labourers are also discussed in this chapter.

Chapter-II deals with the constitutional protection, with constituent Assembly, Fundamental Rights and Directive Principles of State Policy for the welfare and safeguards of the bonded labourers and judicial activism also discussed in this chapter.

Chapter -III deals with the Bonded Labour System (Abolition) Act, 1976, its need definition reasons and objects, salient feature with the interpretation of Supreme Court discussed in this chapter.

Chapter -IVth deals with the Bonded Labour System and its challenges regarding identification, liberation and rehabilitation of bonded labour with assessment and Evaluation of various schemes of the Govt.

Chapter-Vth deals with the conceptual understanding of social justice with its meaning, definition, position in the Constitution with reference to

fundamental rights and directive Principles with the role of judiciary and interpretation by the Supreme Court.

Chapter- Vth deals with Public Interest Litigation or Social Action Litigation as an instrument of Social justice with the meaning, concept, definition, historical background of locus-standi and PIL. The role of Supreme Court regarding the promotion of Social Justice has also been discussed.

Chapter-VIIth deals with Judicial Activism regarding bonded labour system has also been discussed. The judicial activism as defender and protector, liberator and rehabilitator, helper and supervisor has been mentioned.

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*          CHAPTER    -   I         *
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## BONDED LABOUR SYSTEM AND ITS FACETS

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### (1) MEANING - IN GENERAL:

Bonded labour system is one of the major social evils, which was prevalent in ancient times in the name of 'slavery', is still in existence in the name of 'bonded labour', 'forced labour', 'begar', 'unlawful compulsory labour', 'serfdom', 'debt bondage', contract bondage', and 'exploitation of weaker sections'.

Bonded labour, legally and strictly speaking, means a labourer who incurs or has or is presumed to have incurred a bonded debt and a bonded debt means an advance obtained or presumed to have been obtained by bonded labourer under or in pursuance of the bonded labour system and it would therefore appear that before a labourer can be regarded as a bonded labourer, he must not only be forced to provide labour to the employer but he must have also received an advance or other economic consideration from the employer unless he is made to provide forced labour in pursuance of any custom or social obligation or by reason of his birth in any particular caste or community.

Bonded labour, generally speaking is the result of an agreement between a debtor and a creditor under which the

debtor pledges his own property, i.e., his physic in the form of personal services to the creditor without, or for a nominal remuneration in lieu of satisfaction of the debt with interest over a specified period, or till the debt is satisfied or repaid.

According to Oxford dictionary of English language, bonded means one who is placed in bonds and bond means imprisonment, thing restraining bodily freedom; while bonded labour means, bond together, uniting forces, agreement deed, etc., entered into by both the parties concerned. This dictionary meaning of bonded labour suggest bodily controlling person and his labour after entering in agreement. In practice, bonded labour in India, is the culmination of the debtor - creditor relation into slave and master relation. Bonded labour is an outcome of socio-economic system in India. Some people who were deprived of the socio-economic and political powers had to depend on those who enjoyed these powers. Criminal poverty vulnerable sections exposed them to exploitation in the built-in-mechanism of socio economic system. Economic dependence and poverty of the under privileged sections of the society forced them to be slaves. This in the course of historical times, privileged class controlled entire life of the under privileged class.

Poverty of the under privileged forced them to borrow money, money lender who under the pretext of lending forces the under privileged one to work free or for nominal wages in his lands. Creditor- debtor contracts whether in



writing or oral had social sanction. Theoretically creditor used to take work from the debtor till debt was cleared off. The rate of interest was very high and was compounded, as a result, the interest used to multiply and ~~smell~~ more than the principal amount within a year's time. As a result poor person could not repay the debt<sup>1</sup> and had to work only for clearing the interest. Debtors were generally illiterate and did not understand the amount entered charged in agreement, many times such written documents were fraudulent showing more amount than that actually was lent to the debtor.

In India, bonded labourers are known by different names in different states and regions. For example, Sevak and Haris in Uttar Pradesh; Baramasis Harwashee and Salkari in Madhya Pradesh; Kamia, Baramsia and Janour in Bihar; Jeeta in Himachal Pradesh; Hali in Gujrat; Halias and Muliya or Naga Muliya in Orissa; Padiyal, Paniyal, Charmas and Pann-yals in Tamil Nadu; Adiammars, Cherumas, Anchilla Kuri-chious, Mupila, Paniyans, Kattunaickans, Adyas, Wynand,<sup>2</sup> Pulayans in Kerala, Jassigula, Paleras, Gothi and Vethi (free service) in Andhra Pradesh; Jeetha in Karnataka; Har-waha and Hariya Sevak in Uttar Pradesh; Chaker and Halia and Nit Mayoor in West Bengal; Sagari in Rajasthan, Sepi in Punjab, Veta, Begar and Salkari in Maharashtra.

Most of these bonded labourers are untouchables and tribes. Caste system functioned as transmission belt to pass on bondage from one generation to another generation always favourable to high castes.

(11) HISTORICAL BACKGROUND:(A) Before Independence:

In all societies a class of exploiters and a class of exploited have always existed in one form or the other. A general tendency developed to exploit the others labour, wherever and whenever there was a possibility. Exploitation of one group of people by another is not a phenomenon existing only in Indian society. It is seen all over the world wherever social and economic inequalities exist. <sup>3</sup> India is known for its unequal society since ancient time. As in every unequal society, exploitation is inevitable, thus in Indian, society, there has been always an exploitation, where the powerful and the wise gained benefits by abusing the weak and the foolish. Exploitation and bonded labour are twins because where exploitation exists bonded labour will flourish in one form or the other.

Origin of bonded labour can be traced from the caste hierarchy and feudal structure. After the arrival of Aryans in India, Indian society was stratified into four Varnas (castes) of Brahmin, Kshatriya, Vaishya and Sudra. Most of the local and aboriginal people who were defeated by the Aryans were given Sudra Varna. Sudras were not given right to property, education and choice of occupation. Rigorous laws detrimental to the interest of Sudras were made. Even mere possession of property

by the Sudras would injure the Brahman. Sudra had no right whatsoever to possess property. This property could be taken away by Brahmins with perfect place as nothing belongs to Sudra but to upper three Varnas.<sup>4</sup> Those who were out of the Varna system were known as Avarnas. Those who did not follow the Varna system were defeated and subjected and were made slaves.

Prominent among them in the later period were the Buddhist who did not follow the system and criticised it. These people were given even lower socio-economic status than that of Sudras. They were also deprived of property and were made untouchable and unseenable. Therefore, they could not be engaged in activities where their touch was involved. Hierarchical, feudalistic caste system imposed heinous jobs on under privileged castes. Since they were deprived of the right to property they had to depend on others for their survival, only left<sup>5</sup> out things were for Sudras. Almost all the Dharma-shastras' writers start with the presumption that the Varnas are arranged in the descending order. Manusmriti affirms that the Sudras are created by God for serving the Brahmin as Dasa and they could be sold or bought.<sup>6</sup> And even if his master frees him from slavery the Sudras has to remain servile and to perform duties. Service<sup>7</sup> was known as natural duty of Sudras.

Bonded labour is a form of forced labour analogous to slavery. If slavery is uncivilized the civilized form of slavery is bounded labour. Bonded labour is a form of forced labour with its disguised qualities of slavery and it is better to call it as quasi-slavery. In India, bonded labour as one of the forms of slavery is a relic of colonial and feudal system. Besides caste hierarchy, in the feudal society the kings and big landlords used to keep servants for their services who belong to the lower caste ( Sudras ) of society.<sup>8</sup> In the literature of economic history, the precolonial society( in India ) was usually depicted as politically autonomous, economically self-sufficient, and more or less a static community.<sup>9</sup>

Slavery (Bonded labour) was also present during Muslim-Rule period. It was continued during Mughal period. However, there is evidence to the effect that slavery was sought to be abolished by a decree of Emperor Akbar in the 16th Century but he was not able to abolish it completely. Agrestic slavery also existed in medieval India and it was prevalent widely when the East India Company assumed power in the 18th Century. Under the Mughals it had been very common in Eastern Bengal and in the days of the company the institution enlarged in the Bengal Presidency. In the early years of the company's rule, its policy was to avoid any dangerous interference in the

social and religious life of its subjects. This policy was not only suited to the peculiar nature of British rule in India, but it was quite in harmony with the British political tradition and practice.<sup>10</sup>

British rule in India banned this age old practice of agrestic slave system and passed Bengal Regulations Act of 1806 to restrict the slave system, but allowed forced labour by its Act VI of 1825. It is to be noted that Section I and 2 of the Madras Labour Act of 1858, particularly its section 6, even legalised forced labour system. This mention of ban on keeping agrestic slaves was a partial although the claim of the master over the slave for sale or purchase was not executed in the court of law, but his other claims were executed even in the Court of law. This provision was limited only to the sale or purchase of a slave for the clearance of revenue<sup>11</sup> Indian Penal Code of 1862, banned this evil system and made it punishable offence. The Kamiana Agreement Act of Bihar of 1920 was passed under Indian Penal Code, in order to ban traffic in human beings.

India is perhaps the only country which dumped some sections of the society as criminals. This was noting but name a dog mad and shoot it. The Criminal Tribes Act was passed in 1924 to suit the convenience of the privileged haves against cruelly oppressed have nots. This Act made provision for extracting forced labour from low castemen under one pretext or the other in the interest

of the high castemen and property holders. This is how in the garb of judiciary weaker sections were exploited and oppressed in India. The process continues with difference of degree depending on the time, place<sup>12</sup> and situation.

The First International Convention (No.29) on forced labour was held in Geneva ( June,10-28 ) in 1930. For the purpose of this convention the term "forced or compulsory labour" shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. This is akin to the bonded labour in India. The Legislative Assembly and the Council of States adopted a resolution recommending to the Government of India to take action on all the provisions contained in the Draft Convention, as soon as might be practicable. In response to session of International Labour Convention at Geneva in 1930, for abolition of forced labour, both houses of legislature adopted resolution banning the forced labour in India, some of the state governments also<sup>13</sup> passed laws banning forced labour. Some of these laws are as follows:

- (i) Bihar Money Lenders Act 1938 (Bihar Act III of 1938).
- (ii) Bihar Money Lenders Act 1939 (Bihar Act VIII of 1938).
- (iii) Debt Bondage Abolition Regulation Act of Orissa of 1940).

(iv) Debt Bondage Abolition Regulation of  
Madras of 1940

(v ) Bombay Money Lenders Act of 1946.

(B) After Independence:

The existence of forced labour among the agricultural communities and thereafter the existence of such labour was also visible in our industries, where the harsh exploitation of workers, their subjection to sub-human standard of work was very common.

Abolition of Forced Labour Convention (1930) was discussed in Provincial Labour Minister's Conference held in 1947 and agreed in principle to abolish this evil system. Orissa compulsory Labour Act, 1948, particularly its section 2(a), 8, 9 and 11 abolished forced labour in the state. Although many states passed laws banning the forced labour, yet they were not effective. Moreover, there was no uniformity in the laws as they varied from state to state. The reasons of the failure of these Acts were that the landlords who were holding huge lands were from high caste and had caste support. They could also influence the executive while the bonded labourers in whose favour laws were made were poor and belonged to the under privileged low castes having no sympathies of the executive. So survey of the bonded labourers was needed.<sup>14</sup>

After the independence, the Founding Fathers enacted Article 23 in the Indian Constitution which guarantees a right against exploitation to the citizens of India. Exploitation, which means the improper utilization of services of other persons for one's own ends, is opposed to the dignity of the individual, to which the Preamble of our Constitution refers.<sup>15</sup>

Article 23(1) of our Constitution provides:  
 "Traffic in human being and begar and other similar form of forced labour are prohibited and any contravention of this provision shall an offence punishable in accordance with the law". The word 'begar' has not been defined in the constitution. The term "begar" is an Indian term and has a varying local connotation, as regards the kind of labour exacted by force. It is a system under which persons are pressed to carry burdens for individuals or public or to perform other forms of menial service under compulsion.<sup>16</sup> The words 'other similar forms of forced labour' in Article 23(1) are to be interpreted 'ejusdem generis'. The kind of 'forced labour' contemplated by the Article has to be something in the nature of either traffic in human beings or begar.<sup>17</sup> Therefore the word "other similar form of forced labour" should not be interrupted as a labour or service which a person is forced to give without any remuneration for it, but it should include whether there is less force or more.



This force may be of different kinds e.g. social, psychological, economic force due to hunger and poverty. Under Article 23(2) the State can impose compulsory service for public purposes and in imposing such service the State shall not make any discrimination on grounds only of religion, race, cast or class or any of them.

In response to the Constitution of India, laws of all States and territories were to be suitably amended, if they were contrary to the provisions of the Article 23 of the Constitution of India. Accordingly many states amended their previous laws or passed new laws in response to the Article 23 of the Constitution of India. Some of these laws are as under:

- (1) Rajasthan passed Agricultural Relief Act of 1951 & Rajasthan Sagari Abolition Act of 1961
- (2) Orissa Debt Bondage Abolition Rules of 1963
- (3) Kerala Pariya Labour Contract (Vallur, Kava Pannon) System Abolition Bill of 1964.
- (4) Lacadives, Minicoy and Amindivi Islands Revenue and Tenancy Regulation Act of 1965, particularly it's section 85(5).
- (5) Bonded Labour Abolition Act of Kerala of 1972.
- (6) Scheduled Castes, Scheduled Tribes and Denotified Tribes Debt Relief Ordinance of Uttar Pradesh of 1974, etc.<sup>18</sup>

Although these various Acts were passed over the years by various State Legislatures banning the forced labour and debt bondage, they were not effective due to lack of uniformity and the universality. These Acts did not serve the purpose because their execution was left to the bureaucracy who had no sympathies for the bonded labourers. To curb the evil, immediate steps were required, therefore, the President of India promulgated Bonded Labour System (Abolition) Ordinance 1975 on 24th October, 1975. By the said Ordinance, bonded labour system was abolished and the bonded labourers were freed and discharged from any obligations to render any bonded labour and their debts were extinguished.

The Bonded Labour System (Abolition) Ordinance 1975 was later converted into Bonded Labour System (Abolition) Act 1976. Bill was passed by both the Houses of Parliament and received the assent of the President on February 9, 1976 and the Act came into force on the 25th day of October 1976 and the subject of bonded labour has been mentioned in the concurrent list given in the 7th Schedule of the Constitution of India.

(iii) REASONS OF BONDED LABOUR SYSTEM:

There are so many reasons for the continuation of this evil practice in this country. Famine and floods; precarious subsistence economy due to dependence of

agriculture on nature, uneconomic landholdings caused by fragmentation of land, and non-availability of facilities needed for agriculture causing poverty; expansionist and imperialist tendencies resulting in battles and wars giving scope for exploitation including sex exploitation of captives and prisoners of war; proselytisation efforts of mendicants observing celibacy to purchase children for adoption as 'faquirs', the practice of donating daughter as gift to serve the deity in the temples, organised and concerted efforts of dancers and prostitutes to purchase girls for their profession; the myth of 'Sudras' being worthy of manual and menial jobs only and the consideration of non-suitability of such jobs for caste Hindus; acceptance of custom of sending maid servants with brides in marriage as a status symbol; social sanctions accorded to dowry and pomp and show at marriage, and other rites and rituals right from the time of conception upto the death and even after that; prevalence of acute illiteracy and ignorance among the masses; and longing of the persons suffering from various types of oppression to seek protection of influential people in society have been some noteworthy factors.<sup>19</sup>

These factors may be classified into economic, social, cultural, political, religious, educational, psychological and gender factors. In fact, the system grew out of acute indigence and helplessness of tribal and semi-tribal communities in the group of precarious subsistence economy.<sup>20</sup> Some of these factors would be useful to discuss separately.

A- ECONOMIC REASON

In most societies the world over, basic needs means ' something more ' than just food, shelter and clothing. It is a truism that virtually all societies have moved away in varying degrees from the traditional agricultural subsistence pattern towards greater specializations, rationalisation urbanisation, modernisation,<sup>21</sup> etc. Poverty, can termed as cause of this social evil. The hard fact is that bonded labour system or the forced labour is more an economic issue than social issue.<sup>22</sup> Indebtness is the mother of the problem of bonded labour,<sup>23</sup> which arises due to economic inequality. Reason of indebtedness was the local customs and traditions. They had to follow these by taking debt for these purposes if they had to live in the society. The traditions and customs which were essentially to be observed were 'Mritiya Bhoj' at the time of death of a family member, feast to whole of the village, at the time of marriages and births, similarly for arranging 'Bhat' at the time of marriage of sister's or daughter's children and 'Mundan' Sanskar 'Dowry' is another reason, which the parent of the girl has to manage at the time of her marriage. Hence, economically bonded labourers were very poor, and they had to follow<sup>24</sup> all such things.

There are several factors which influence the bonded labour to take loan. They are, absence of any agricultural work for nearly nine months in a year and consequent

need to fulfil man's needs. Since the lower caste persons do not have enough land to cultivate and lead their lives they have to depend upon other jobs like tailoring shoe-making which are also not enough. They need money for fulfilment of social obligations besides satisfaction of their physiological needs and for this purpose<sup>25</sup> they become indebted to the higher caste persons. This has resulted in creation of slavery. The produce which they get exhausted in a very small period and for the remaining part of the years, they were to live on the mercy of the landholders.

The money-lender does not demand any security; money can be given at any hour of the day or night; in most cases, no formalities are observed; repeated demands for loans are welcomed by money lenders. The lending systems are just methods of squeezing out the villagers in financial stringency. The loan from money-lender is a trap to involve the village pauper in his tentacles and make him the bonded labourer. As the debtor has nothing to offer as security, the creditor demands that he pledge his person and work for the creditor in lieu of the redemption of debt and interest. The main interest of the money lender is to secure a source of cheap<sup>26</sup> labour for himself, if possible, on a long-term basis.

13.6 per cent of the bonded labourers incur debt of more than Rs. 1,000 whereas 12 percent of the fellow

bondsmen have taken a loan of Rs. 1 to 100 and 34 per cent have taken a loan of Rs. 101 to Rs. 500 and 21 per cent have taken a loan of Rs. 501 to Rs. 1000. The rate of interest is simply fantastic and amounts to callous exploitation. 39 per cent of the respondents do not know the amount of interest they have to pay for the debt and 27 per cent do not pay interest at all. In many cases bonded labourers pay interest at the rate of 400 per cent. The creditor encourages the labourers who were caught by his tentacles, to take more and more debts year after year and thus ensures a source of cheap labour for himself. Guarantee of a permanent source of cheap labour, which gives the landlord in the long-run big dividends, is more important than simply extracting from them ridiculous rates of interest for loans.

#### B. SOCIAL REASON

Most of the poor and under privileged people are made bonded labourers of one type or the other, in one place or the other. Many evil practices in India are systematised and legalised for the benefit of few privileged and rich people. Since political and economic powers were concentrated in a few hands of socially privileged sections, they managed to create, pass and execute certain laws protecting their own interest but detrimental to the interests of large under privileged masses. Thus the political power and economic power are going on hand in hand. In such a situation how a

bonded labour can go against the master or think of coming out of the clutches of the bondages? Politicians are boasting that they had released bonded labourers and some of them say that the landlords are not responding to them. In reality, in such situation both landlords and politicians are one and the same. How is it possible to introduce change against the landlords who are also politicians? The tragedy of execution of such reformatory laws lies in the dual personality of law makers. When executors of the laws are also victims of the laws then it is not surprising if they do not execute such laws. Thus the makers of laws, executor of laws and the persons against whom laws are made, by and large are same people. Hence, such laws normally become<sup>29</sup> only decorative pieces of the legislatures.

Bonded labour system very much exists in spite of passing of laws against it because of the collusion between the masters of socially backward bonded labourers and executive machinery which seems to be sympathetic towards the masters. Loopholes in the law helped the masters, rather than serfs. The bonded labourers are so weak that they can not take advantage of legal provision. Moreover, they do not have alternative source of living even if they are released from bondages, so they are<sup>30</sup> compelled to continue as bonded labourers. It is also reason for the existence of bonded labour system that bonded labourers having limited social contract, confined

them only upto their masters and a particular place. Normally, the masters force their bonded 'labourers to construct a thatched huts in agricultural fields. Such confined bonded labourers are virtually cut off from rest of the world for all practical purposes. Therefore, from the point of view of social contracts the bonded labourers and their family members are totally socially cut off and this evil system remaine continue in the society.

#### C. CASTE SYSTEM — A REASON

One of the important factor for the continued existence of bonded labour system has been the complex and caste-ridden social structure of our society. Bonded labour is a phenomenon which can be structurally identified with the Scheduled Castes and Scheduled Tribes. Though originally the social groups performing the most menial jobs for the society were categorised into the lowest cast, the economic character of this classification was quite revealing. The religious ritualisation of Sudra and Panchama castes to serve the upper castes was supported to give an aura of social legitimisation for cementing the economic exploitation of castes ritually looked down upon.

National Survey Report on the Incident of Bonded  
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 Labour, published in Jan. 1981 is an eye-opener. According to this report the percentage indicated against the following communities disclosed the number of bonded labourers:



TABLE - I

S.No.	Caste/Class/Community	Percentage
1.	Scheduled Caste	61.5
2.	Scheduled Tribes	25.1
3.	Backward Class	6.9
4.	Muslims	2.6
5.	Christions	0.1
6.	Hindus	2.2

In the above table scheduled caste indicates for Harijans, Scheduled Tribes for Adivasis, Backward class for traditionally called Sudra castes, but nonetheless a part of the four fold system of traditional Hindu organisation.

D. RELIGIOUS REASON

Religions philosophy is also one of the reason for the existence of bonded labour system. The four-fold division was by certain Brahmin rishis, deemed as of divine origin, having been established by Brahma, the God of creation, to ensure progress of the society. The Lord declared the assigned roles, functions and obligations of men belonging to different Varnas caste. The Varnas Karma was thus a rank order of social status. Men were by nature unequal in rank, and there was a natural order among them. All were not equal, and social inequality was natural. Brahmin was ordained to study, to teach,

to do Yajna and to defend Dharma. Kshatriya was ordained to protect and defend the realm, to rule and to make donations. Vaisya was asked to do cultivation, to protect the cattle, to trade and establish industry, to lend money and to make donations. Sudra was obliged to show respect to those who were his superior by caste;  
 32  
 to serve men of those higher castes.

According to the religious philosophy the Sudras were treated and still being treated as servants of the remaining three classes of the Hindu society and had been placed at a very lower stage of the society and were subjected to the atrocities of the higher classes. The loss of ambition and continuous sufferings in the life they are made to believe that there is nothing wrong, it is due to their badluck and they cannot do anything against it. Besides this the 'Karma' Theory which tells that one receives bad or good life on the basis of sins or virtues of previous life. This philosophy of 'Karma' is backed by religious precepts and is accepted by both rich and poor, high or low caste, men and women. So also it is accepted meekly by the bonded labourers and his family members. Therefore this religious philosophy support to continue the existence of bonded labour system.

### E. PSYCHOLOGICAL REASON

Inspite of economic, social, caste and religious reasons psychologically these people have been brain-washed by the dominating classes. They consider refusal to payment of debt is a sin. They feel that their salvation depends on how they served their master. Moreover psychologically they think that by working as bonded labour their need is satisfied and their problem is solved because they get food from landlord.<sup>33</sup>

Bonded labourers even cannot imagine that their labour costs more than what they are receiving. This systematic brain washing does not allow them to think have the urge to free themselves from bondage. The homing of bondage since childhood on the bonded labour kills his imagination and aspiration from freedom. Even if one is released from the bondage, he may not appreciate the value of freedom, on the contrary he may prefer to bondage to free climate. They also think that the refusal of the payment of debt was considered by them as a sin.<sup>34</sup>

Surprisingly, sometimes bondage is treated as an ornament by some of them. Some of them take pride in the richness and power of their masters. While talking, many of them refer to their landlords as "My master" and "My Owner" and "My Sir", etc. Even their children and wives too use similar honourific words to their landlords. Thus even while talking in normal conversation, they

consciously or unconsciously accept the slavery which help continuation and strenthening the system instead of challenging it. Even if some one talks about freedom from bondage, bonded labourers themselves do not appreciate it and some of them feel it as an insult to their masters and treachery on their part. One who tries to convince them to get rid of the bondage is disliked by some bonded labourers. Nevertheless, some of them feel like getting rid of the bonded labour system, but they have to accept it because of their helplessness.

#### F. ILLITERACY - A REASON

The bonded labour system existed not only due to economic, social, caste, psychological reasons but also due to illiteracy in rural areas. Due to illiteracy, among the working class, the various measures which had been taken by the state could not reach its destination, as the exploiters were able to mould the government machinery in their favour by hook or crook, and the welfare measures could not fetch its fruit as was envisaged by its implementation. Therefore illiteracy played and still playing role for the continuation of this social evil. It can be removed upto some extent with help of education in rural areas.

(iv) KINDS OF BONDAGE:

There are many kinds of bondage which were evolved over a long period of history in Indian societies. These different kinds of bondage can be identified all over the country in different forms. These may co-exist in one region at the same time, although these belong to different historical stage of the development of agricultural, industrial production. The differences between these kinds of bondage is determined by the quality of the social relations between debtor and the creditor, between owner and worker, the stage of development of the productive forces, the pattern of work to be performed by the bonded labourer, and by the purpose of giving and taking loan on the side of the master and the bonded labourer respectively. There are also slight differences between these bondage in nature. It will be beneficial to discuss about the nature of some major kinds bondage and to know about these bondage from the subject matter point of view.

(A) Inter-generational Bondage:

The chief characteristic of this type of bondage is that the physically weak farther stops working as a bonded labourer and his son replaces him as a successor in bondage, thus guaranteeing inter-generational continuity of bondage. The debtor is usually the bonded labourer's father or grandfather. Unable to repay the

loan while he was physically able, the father ceases to work for the master. But the master demands that the young son of the 'former' bonded labourer should replace his father, and around the age of ten years the young bonded labourer is introduced into the system of bondage. His first job is usually cattle-grazing. As he advances in age, he will be allotted more and more work in all  
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agricultural fields. Sometimes, it may so happen that due to unemployment and poverty for other members of the family forces them to take more loans and financially surrendering more members of family into bondage.

Inter-generational and child bondage are closely interlinked. Most of the child bonded labourers are actually the sons of bonded labourers who have already been in servitude since long. Not only does the master claim a younger bonded labourer to replace the father, the bonded labour family has become so impoverished over the years that the bondage of one or two of the sons of the family becomes inevitable. In the beginning of his bondage, the young bonded labourer does not get the same payment as the father received; a young cowherd is only given his daily food. Later, when he works in more fields the young bonded labourer gets same wages. Often the master finances the young bonded labourer's marriage with a new loan, for this loan, as well as for his father's loan, the bonded labourer will have to work  
37  
till he is unable to work.

(B) Customary Bondage:

The relationship between the bonded labourer and the landlord is characterised by the overt paternalism of the landlord, and hence tends to be a personal relationship which includes elements of dependence and obligation as well as compulsion and protection. The interaction between patron and client is designed to perpetuate the unequal relationship between the two sides. The relationship is maintained and nurtured by the social control of the master over the life of the bonded labourer. The master limits his exploitation of bonded labourer to an extent which allows the bonded labourer to survive at the level of the unequal relation. He has to do all types of work, from agricultural operations to household work and he has to be at the master's beck and call whenever required. The superiority of the master is justified by ideology of the social milieu and the socially oppressed bonded labourer is compelled to accept the place allotted to him in the corresponding system of coercion.

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In general, the bonded labourer obeys social norms though realising oppressive character. Thus, the reason for taking the loan is interwined between domestic economic pressures and social obligations. The master encourages such behaviour because it guarantees the permanent dependence of the bonded labour on him.

As a rich land owner, he is not willing to improve his agricultural operation, but he prefers to engage in money lending. In it's 'decadent' form, traditional bondage means land-grabbing from the bonded labourer, depriving him of any form of freedom, complete dependence on the landlord, extortion of all assets the bonded labour family owns and subjugation under strict working rules. In these cases the master has lost his function and given up his role as a patron and has become  
39  
a brutal exploiter.

In customary ( traditional ) bondage the relationship of the master and servant is maintained and natured by the social customs and traditions prevailing in the society. The bonded labourers follow all these customs and traditions helplessly.

(C) Share-Cropping-Cum-Bondage:

The chief characteristic of this type of bondage is that the labourer works for the master as a bonded labour, and at same time he cultivates a small plot of land which the master allotted to him as share cropper.

(1) The master is a relatively wealthy landowner who requires some permanent labourers on his fields. For this purpose he keeps bonded labourers. His production is not fully market oriented, and his fields are not entirely used by himself. So it is a good compromise for him to rent out a portion of his land to a bonded



labourer who becomes a bonded share-cropper. The master does not pay wages to the bonded labourer in cash but leaves him 50% of the produce on the share-cropped fields. Thus, the master avoids monetary relations with the bonded labourer.

(2) The landless labourer is in desperate search for a plot of land, but no land is available due to its (alleged) scarcity. The landlord offers the labourer a piece of land under one condition: he should work under the landlord as Bandhwa Mazdoor. He may also take a loan from the master (usually a loan to buy seeds or other implements) and works for the landlord according to his requirements. Simultaneously, he earns his living by cultivating the plot of land that was allotted to him by the master. He has to deliver 50% of the produce is looked upon by the master as the nominal wages for the share-cropper-cum-bonded labour.

Unusual is the bondage agreement. The bonded labourer lost his own land and is turned from the status of a marginal farmer into that of a share-cropper or tenant-at-will. He has to work for the master as a bonded labourer in order to repay the loan, for which work he does not receive a proper wage. For his food consumption he works as a share-cropper with the master having partial control over the land. The master owning a considerable area of land can afford to utilise the bonded labour working force completely for himself, but makes the bonded

labourer work as a share-cropper on his fields thus enabling himself to expropriate 50% of the bonded share-croppers produce.<sup>42</sup>

(D) Widow Bondage:

The master cares for her (woman) after the death of her husband. The master gives loan to the widow to perform death rites and make the widow bondage. Bondage on account of social customs where members of a community have to serve members of another community in bond as a social custom. She works in the master's household or does some agricultural work. Master gives him a hut or farm-yard to the agricultural labourer and this is treated as a loan causing the bond. The bonded widow have to do maximum work and make herself available round the clock. She does not receive even nominal wages. In return she gets minimal food for survival.

(E) Multiplicative Bondage:

Repeated incurrence of debts by the bonded labourer makes him more and more dependent on the master. Lack of employment for the other members of the family compels them to take more and more loans and finally surrendering more members of the family into bondage. Total absence or the loss of assets and shortage of jobs in the rural labour market lead to an increasing impoverishment of the bonded labour family which ultimately ends up in its being under the total control of the master.<sup>43</sup>

(F) Modern Bondage:

The relationship between debtor and creditor is impersonal and more technical. The landlord tends to extract as much work as possible, without caring for the consequences to the life of the bonded labourer. Very often the relationship is not a short-term relationship. The master owns enough land to be able to employ a number of agricultural labourers during the whole year. He is more interested in extracting labour from labourers than in usury. The need for cheap agricultural labour may result from the attempt to increase the production with limited capital investment; the landowner tries to increase productivity through intensification of labour and not through intensification of capital, either due to lack of investible capital, or unsuitable fields and cropping patterns. 44

In general, the debtor incurs the debt for physical survival. His relationship with the employer-master being impersonal, devoid of any opportunity of getting work in the competitive labour market due to surplus labour, struggling for bare survival, he is driven towards the most vulnerable and the weakest layer of the agrarian hierarchy. Deprived of any bargaining power he remains among the poorest sections of the agricultural labourers. The type of work he has to do, however, has a tendency more towards the specialised modern agricultural sector, like operating diesel or electric  
45  
pumping sets.

NOTES AND REFERENCES

1. N.D. Kamble, Bonded Labour in India, P. 3, 1982 Ed.
2. V. Eacharan, Abolition of Bonded Labour and After, Vanyajati, Vol. XXIV, No. 3 July 1976, P. 2
3. N.N. Vyas, Bondage and Exploitation in Tribal India, P. 1, 1980 Ed.
4. N.D. Kamble, Scheduled Caste, Chapter II, 1980 Ed.
5. Ibid.
6. Manusmriti, VIII, P. 413
7. Ibid., at P. 414
8. Bonded Labour in India, India Book Exchange, P.1, 1976 Ed.
9. Supra, Note 3 at P. 83
10. S.K. Singh, Bonded Labour and the Law, P.7, 1994 Ed.
11. Supra, Note 1 at p. 9
12. Ibid.
13. Ibid.
14. Indira Gandhi, Bonded Labour, Social Welfare (Suicides in India) Vol. XXIII, No. 3 June 1976, P. 27
15. H.M. Seervai, Constitutional Law of India, Vol.1, P.894, 1983 Ed.
16. AIR Commentaries on the "Constitution of India", Vol. II, P. 436, 1970 Ed.
17. M.P. Jain, Indian Constitutional Law, P. 525, 1978 Ed.
18. Supra, Note 14 at P. 28
19. Dr. Surendra Singh, "Towards Emancipation and Rehabilitation of Bonded Labour in India," LL.J., Vol. XVIII, Aug. 1976, No. 8, PP1493-94

20. Report of the National Commission on Labour, 1969, P. 409
21. Nadeem Husnain, Bonded for Ever, P. 7, 1982 Ed.
22. V.P. Gupta, "What is Bonded Labour"? Lab and IC, Vol. 19, 1986 Jan., P. 13
23. Bonded Labour in India, India Book Exchange, P. 3 1976 Ed.
24. Anand K. Dubey, Social Justice and Bonded Force in India, p. 21, 1989 Ed.
25. Supra Note 23 at p. 4
26. "Bonded Labour in India", National Survey on the Incidence of Bonded Labour, Final Report, Jan. 1981, P. 16
27. Ibid., at pp. 20-21
28. N.D. Kamble, Bonded Labour in India, p. 121, 1982 Ed.
29. Ibid., P. 117
30. Ibid., p. 127
31. Supra, Note 26 at p. 17
32. Quoted by Anand K. Dubey, Social Justice and Bonded Force in India, PP 19-20, 1989 Ed.
33. Supra, Note 23 at P. 8
34. Supra, Note 28 P. 127
35. Ibid., PP 127-128
36. "Bonded Labour in India", National Survey on the the Incidence of Bonded Labour, Final Report, Jan. 1981, PP. 134-135
37. Ibid., at p. 135
38. Ibid., at P. 131
39. Ibid., at PP 131-132
40. Ibid., at P. 137
41. Ibid., at P. 137-138
42. Ibid., at P. 138-139

- 43. Ibid., at P. 136
- 44. Ibid., at P. 133
- 45. Ibid., at PP.133-134

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CHAPTER - II

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BONDED LABOUR SYSTEM AND

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CONSTITUTIONAL PROTECTION

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BONDED LABOUR SYSTEM AND CONSTITUTIONAL  
PROTECTION

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(i) CONSTITUENT ASSEMBLY AND BONDED LABOUR SYSTEM:

After independence of India, the Constituent Assembly while designing a Constitution for the country besides other problems it had to face the problems of 'trafficking in human beings', 'begar' and 'other similar form of forced labour' (Bonded labour system). The result of the deliberations was Article 23 of the Indian Constitution. There was huge discussion for the purpose. It will be beneficial for the subject matter to see what Constituent Assembly speaks about this social evil.

Traffic in human being means to deal the men and women like goods. To sell or let or otherwise dispose them like chattels. It would also include traffic in women and children for immoral purpose.<sup>1</sup> Prof. K.T. Shah pointed out that forced labour was an evil and its peculiar form known<sup>2</sup> by the word 'begar' should also be prohibited. Kazi Syed Karimuddin moved an amendment to the effect that begar could<sup>3</sup> be permitted as a punishment for crime. Shri T.T. Krishnamachari pointed out as:



"I think some form of forced labour does exist in practically all parts of India, call it 'begar' or anything like that, and in my part of the country, the tenant of often times is more or less a helot attached to the land and he has certain rights and those are contingent on his continuing to be slave." 4

Shri Raj Bahadur member of Constituent Assembly stressed the hardship arising out of such practice in very strong terms and said:

'Begar' like slavery has a dark and dismal history and behind it. As a man coming from an Indian State, I know that this begar, this extortion of forced labour, has meant to the down-trodden and dumb people of the Indian States. If the whole story of this begar is written, it will be replete with human misery, human suffering, blood and tears. I know how some of the Princess have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the down-trodden labourers and dumb ignorant people for the sake of their pleasure. I know for instances, how far duck shooting a very large number of people are roped in forcibly to stand all day long in mud and slush during cold chilly wintry days. I know how for the sake of their game and hunting people have been roped in large numbers of beating the lion so that the princess may shoot it. I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of family are ill. These people are paid nothing or paid very little for the labour extorted from them. This is not the whole story. As I said in the begining, it would make really a tyrannies which are perpetrated upon poor people by the petty officials. Not only do these petty officials perpetrate such tyrannies but they also extort bribe from the labourers who wants to escape the curse of this begar. 5

Shri S. Nagappa praised and supported the constituent Assembly in its efforts to prohibit forced labour and observed:

"This practice of begar is prevalent in my own part of the country, especially among the Harijans. I am glad that the Drafting Committee has inserted this clause to abolish 'begar'. Whenever, cattle die, the owner of the cattle wants these poor Harijans to come and remove the dead cattle, remove the skins, to them and make chappels and supply them free of cost. For this, what do they get? Some food during festival days. Often, this forced labour is practiced even by the Government. For instance, if there is any murder, after the postmortem, the police forces these people to remove the dead body and look to other funeral processes. I am glad that hereafter this sort of forced labour will have no place. Then, this is practised in Zamindaries also.

Another thing that I want to bring to the notice of the house is that whenever the big Zamindar's land is to be ploughed, immediately he will send word for these poor people, the Harijans, the previous days, and say; "all your services are confiscated for the whole of tomorrow; you will have to work throughout the day and night. Now one should go to any other work". In return, the Zamindar will give one morsel of food to these poor fellows. Sir, this sort of forced labour is in practice in the Twentieth Century in our so-called civilised country. I am very thankful to this drafting committee. I support this Article". 6

(11) FUNDAMENTAL RIGHTS AND BONDED LABOUR SYSTEM:

After the long discussion on the subject matter in the Constituent Assembly Article 23 of the Constitution runs like this:

Article 23(1) provides: "Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law".

Article 23(2) provides: "Nothing in this Article shall prevent the state for imposing compulsory service for public purposes and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them".

Therefore, Article 23 of the Constitution protects the individual not only against the State but also against private citizens. It imposes a positive obligation on the state to take steps to abolish evils of "traffic in human beings and begar and other similar forms of forced labour. It prohibits the system of 'bonded labour system' because it is a form of force labour within the meaning of this Article. The protection of this Article is also applicable to both citizens as well as non-citizens. It is a very salutary provision intended to ensure human dignity against social injustice and economic exploitation perpetuated in our social policy for a long time.

Under Article 23 of the Indian Constitution 'Begar' we means involuntary work without payment and 'other forms of forced labour' means to compel a person to work against his will. Malseworth gives the meaning of begar as, "Labour or service exacted by a Government or a person in power without giving remuneration for it and in Wilson's glossary it was defined as one pressed to carry burden for individuals or public, under old system when pressed for public service no pay was given".<sup>7</sup> AIR commentaries on

the Constitution of India defines begar as a system under which persons are pressed to carry burdens for individuals or public or to perform other forms of menial service under compulsion.<sup>8</sup> The words 'other similar forms of forced labour' in Article 23(1) are to be interpreted . 'ejusdem generis'. The kind of 'forced labour' contemplated by the Article has to be something in the nature of either traffic in human beings<sup>9</sup> or begar.

Article 23 guarantees a right against exploitation to the citizens of India. It is a Fundamental Right not to be compelled to work without wages.<sup>10</sup> Exploitation, which means the improper utilization of services of other persons for one's own ends, is opposed to the dignity of the individual, to which the Preamble of our Constitution refers.<sup>11</sup> The other expression 'traffic in human beings', commonly known as slavery implies the buying and selling of human beings as of they were chattels, and such practice is abolished.<sup>12</sup> The other words 'other similar forms of forced labour' in Article 23(1) are to be interpreted 'ejusdem generis'. The kind of forced labour' contemplated by the Article has to be something in the nature of traffic in human beings or begar.<sup>13</sup> From all these views, interpretations, decision, it is clear that begar, forced labour etc. all are similar to bonded labour system.

Peoples Union for Democratic Rights v. Union of India.<sup>14</sup> Popularly knew as 'Asiad Case' is a milestone in the judicial history heralding the advent of poverty

oriented jurisprudence for the delivery of social justice through courts.<sup>15</sup> In the *Asiad* case Supreme Court by its dynamism for the first time in the judicial history of India read the provisions of labour laws into Fundamental Rights to secure socio-economic justice to the privileged classes.<sup>16</sup>

The Supreme Court of India dealing with the question of interpretation of Article 23 of the Constitution in the instant case emphatically rejected the argument equating forced labour with "begar" so as to confine the reach of Article 23 of the Constitution to those cases where no wage was paid as distinguished from cases where some monetary compensation was paid. The Supreme Court<sup>17</sup> relying on Maneka Gandhi Case, where the Court had once again reiterated the principle that, "when interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content".

The Court pointed out that keeping in view the above principle it was difficult to assume that the reach of the Constitutional provision was so restricted as to permit socially and economically powerful to exploit the indigent and poor resorting to different forms of forced labour. Such interpretation was absolutely unwarranted being illogical and out of context and deserved

nothing but rejection, because if accepted: Justice

Bhagwati said:

"Could there be any logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all, it should be regarded as pernicious practice sufficient to attract the condemnation of Article 23, but if some remuneration is paid for it, then it should be out side the inhibition of that Article? If this were the true interpretation of Article 23 it would be reduced to a mere rope of sand, for it would than be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigours of Article 23 ". 18

The words other similar forms of forced labour are used in Article 23 not with a view to importing the particular characteristic of begar but with a view of bringing within the scope and ambit of that article all other forms of forced labour. If the requirement that labour or work should be exacted without any remuneration is imported in 'other forms of forced labour', they would straightway come within the meaning of the word 'begar' and in that event there would be no need to have the additional words "other similar forms of forced labour". These words would be futile and meaningless, and it is a well recognised rule of interpretation that a construction which has the effect of rendering any word, used by legislature superfluous or redundant should

be avoided. Therefore the object of adding the words "other similar forms of forced labour", is clearly to expand the reach and content of Article 23, by including in addition to 'begar'. Every form of forced labour is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. In cases of service contracts for a specified period, though the remuneration is paid the contract can not be specifically enforced and such enforcement would amount to a forced labour and would come under the inhibition of Article 23.

The Court illustrated this principle by pointing out that: "a case where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such persons before the expiration of the period of three years. If a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years. It would clearly amount to forced labour and such a law would be void as offending Article 23."<sup>19</sup>

This was precisely the view taken by the United States Supreme Court in Baily v. Alabama State.<sup>20</sup> In this case a legislation was enacted by Alabama State providing that when a person with intent to injure defraud his

employer enters into a contract in writing for the purpose of any service and obtains money or other property from employer and without refunding the money or property refuses or fails to perform such service, he will be punished with a fine. The Constitutional validity of this legislation was challenged on the ground that it violates the 13th Amendment which inter-alia provides: "Neither slavery nor voluntary servitude.... shall exist within the United States or any place subject to their jurisdiction". This challenge was upheld by a majority of the court. Mr. Justice Hughes has delivered the majority opinion in the case.

Justice Bhagwati drawing upon U.S. precedent came to the conclusion: "it is therefore, clear that even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration he can not be forced, by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour<sup>21</sup> within the inhibition of Article 23.

Giving multi-dimensional meanings to the term 'Forced Labour', Justice Bhagwati pointed out that forced labour may arise in any one of the following ways:

1. The more blatant form of labour is one where actual physical force is used to compel a person to render service against his wishes, or



2. Where compulsion is not physical, but is exerted through a legal provision, such as a provision for imprisonment or fine in case the employee fails to provide labour or service to the employer, or
3. A form of compulsion arising out of hunger and poverty, want and destitution, or
4. where the choice of alternative is absent and the labourer is compelled to perform a job against his wishes.<sup>22</sup>

Bhagwati, J., stated that:

"any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as force and if labour or service is compelled as a result of such force, it would be forced labour. where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than minimum wage.<sup>23</sup>

The word "force" can not be given a restrictive meaning so as to cover only cases of legal or physical force only, because the constitution of India makes provision for the establishment of a new socio-economic order which may provide economic and social justice to all. The Constitution requires the building of a new Socialistic Republic, where workman shall have right to work, to

education and to adequate means of livelihood. In a Capitalistic society, economic compulsion often have more weight than physical and legal force and therefore the term "Forced Labour" is to be construed liberally. The learned judge observed;

"The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in wants and compels him to provide labour or service though the remuneration received for it is less than the minimum wages."24

Where a person is obliged to render service in return of wages less than the minimum prescribed by the law, then there is no reason as to why he can not be treated as being compelled to render service unwillingly. Thus where an amount less than the minimum wages is paid for services rendered then the case would clearly fall within the sphere of the Article 23. Such a person can validly move the court for enforcement of the fundamental right demanding judicial direction that the payment should be made according to the law laying down the minimum wages.

In the instant case (Asiad case), it was held that the deduction of Rs.1 per worker per day by the Jamadars from the wages payable to workers employed by contractor for Asiad Projects in Delhi as a result of which the workers did not get the minimum wage of Rs.9.25 per day was violative of Article 23 of the Constitution.

The Court directed the Government to take necessary steps for punishing the violation of fundamental rights of citizens guaranteed by Article 23 by private individuals.<sup>25</sup>

It is quite obvious that no person will perform services voluntarily in return of wages less than the bare minimum subsistence level which forms the basis of the rates fixed under the Minimum Wages Act, 1948. Existence of compulsion will be presumed to exist where a person who knows the rate of Minimum Wages, but is still ready to provide service for a sum less than the minimum wage. The learned judge observed:

"It may, therefore, be legitimately presumed that when a person provides labour a service to another against receipt of remuneration which is less than the minimum wages, he is acting under the force of some compulsion which derives him to work though he is paid less than what he is entitled under law to receive".<sup>26</sup>

27

In Sanjit Ray v. State of Rajasthan, The workers were paid below the minimum wages in the name of public utility service where constructing a bridge was going on as a part of famine relief in the State of Rajasthan. The Supreme Court after extensively referring to the observations of the court in Asiad Workers case widening the horizons of Article 23 observed :

"There is no reason why the State should resort to such camouflage. The presumption, therefore, must be that the work undertaken by the State by way of famine relief is useful to the society and productive in the creation of some asset or

wealth and when the State exacts labour or service from the affected persons for carrying out such work, e.g., a bridge or a road, which has utility for the society and is going to augment the wealth of the State, there can be no justification for the State not to pay the minimum wage to the affected persons. The State can not be permitted to take advantage of the helpless condition of the affected persons and exact labour or service from them on payment of less than minimum wage. No work of utility can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions. The State can not under the guise of helping these affected persons exact work of utility and value from them without paying them the minimum wage. Whenever any labour or service is taken by the State from any person, whether he be affected by drought scarcity conditions or not, the State must pay at least minimum wage to such person on pain of violation of Article 23 and the exemption in the Act insofar as it excludes the applicability of Minimum Wages Act, 1948 to workmen employed for famine relief work and permits payment of less than the minimum wage to such workmen must be held to be invalid as offending the provisions of Article 28".

29

In Deena v. Union of India, it was held by the Supreme Court that labour taken from provisions without paying proper, reasonable remuneration, wages was amount to "Forced Labour" and violative of Article 23 of the Constitution. The provisions are entitled to payment of reasonable wages for the work taken from them and the Court is under duty to enforce their claim.

The Supreme Court has widened the scope of Article 23 of the Constitution by giving proper interpretation in the above mentioned cases which help to protect the

interest of the labourers and socially economically deprived classes. Therefore Article 23 is a very salutary provision intended to ensure human dignity against social injustice and economic exploitation perpetuated in our social polity for a long time.

(iii) DIRECTIVE PRINCIPLES AND BONDED LABOUR SYSTEM:

The Directive Principles of State Policy contained in Part IV of the Constitution set out the aims and objectives to be taken up by the States in the governance of the country. Today we are living in an era of a Welfare State which has to promote the prosperity and well-being of the people. The Directive Principles lay down certain economic and social policies to be pursued by the various Governments in India; they impose certain obligation on the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. The idea of Welfare State envisaged by our Constitution can only be achieved if the States endeavour to implement them with a high sense of moral duty. The Directive Principles are the ideals which the Union and State Governments must keep in mind while they formulate policy or pass a law. They lay down certain social, economic and political principles, suitable to peculiar conditions prevailing in India. In the words of Sri G. N. Joshi "they constitute a very comprehensive political,

social and economic programme for a modern democratic State? Dr. B.R. Ambedkar aptly describes them as a "novel feature" of the Constitution of. They in fact, inscribe the objectives of a Welfare State.<sup>30</sup>

The Indian Constitution is a social document. The majority of its provisions are aimed at achieving the goals of the socio-economic revolution and the core of the commitment to the social revolution lies in the fundamental rights and Directive Principles of State policy. The genesis of fundamental rights and directive principles is to be found in the freedom struggle which the people of India wages against the British rule under the sponsorship of the Indian National Congress led by Mahatma Gandhi, Jawaharlal Nehru and others. The leaders realized the importance of the political and civil rights of the individuals, because they knew from their experiences of the repression under the British rule that these rights are absolutely essential for the dignity of man and development of his full personality. But at the same time, they were also conscious that in the socio-economic conditions that prevailed in the country, only few people would be able to enjoy these civil and political rights. There are millions of people in the country who are poor and destitute and for them, these civil and political rights would be meaningless. It was thought that to the majority of people who are living in almost sub-human conditions and abject freedom and

liberty would be useless and the only solution for making these rights meaningful to them, were socio-economic justice. Therefore, it was necessary to create a socio-economic condition in which every citizen of the country would be able to exercise civil and political rights.<sup>31</sup>

In Madras v. Champakam Dorairajan<sup>32</sup> The question supremacy among the directive principles and fundamental right arose. The Supreme Court held that in case of conflict between the two, the fundamental right would prevail over the directive principle. In course of time the court started giving a good deal of value to the directive principles. The court adopted the view that where two interpretations of a statute are available, the construction in conformity with the directive principles has preference.<sup>33</sup> Further, the Court also adopted the view that in determining the scope and ambit of fundamental right, the directive principles should not be completely ignored and that the court should adopt the principle of harmonious construction.<sup>34</sup> There is no anti thesis between the Fundamental Rights and Directive Principles. They are meant to supplement one another, Shelat and Grover, JJ. in Keshavanand Bharti's case observed:

"Fundamental Rights and the Directive Principles are meant to supplement one another. It can well be said that the directive principles prescribed the goal to be attained and the fundamental rights lay down the means by which that goal to be achieved".

In Uni Krishan v. State of A.P.<sup>36</sup> - In this recent decision the Court has reiterated the same principle that "the fundamental rights and directive principles are supplementary and complementary to each other and the provisions in Part III should be interpreted having regard to the preamble and the Directive Principle of the State Policy.

The Directive Principles are not enforceable by any court of law. But it seeks to give certain directives to the legislatures, to the Central and State governments as to how and in what manner they are to exercise their powers. If the State is unable to implement any provisions of Part IV, no action can be brought against the State in a law court. The reason behind the legal non-enforceability of these principles is that government functions under several restraints, the most crucial of these being that of resources. The State authorities have to answer for them to the electorate at the time of election for the non-implementation of any provision.

The fundamental right though important for the bonded human being but the directive principles are more valuable to them. The directive principles contains ample provisions for the upliftment of bonded labourers. According to Article 39(a) it shall be obligation of the state to direct it's policy towards securing it's citizens right to adequate means of livelihood. Right to



adequate means of livelihood. Right to livelihood is an important facet of right to life because no person can live without means of living that is means of livelihood.<sup>37</sup> If the right to livelihood is not traced as a part of the constitutional right to life, the easiest way of depriving a person of his right to life will be to deprive him of means of livelihood. Such deprivation would not only denude the life of its' effective content and meaningfulness but it would make life impossible to live. There is thus close nexus between life and means of livelihood.

In case of bonded labourers, the obligation of State under Article 39(a) can only be meaningful if they are provided adequate means of living, cannot be arranged without providing them right to work.<sup>38</sup> Article 39(b) and (e) together with other provisions of the constitution contain the main objectives namely, the building of a welfare society and an equalitarian social order in the Indian Union. When the Constitution makers envisaged development in social, economic and political fields, they did not desire that it should be a society where a citizen will not have the dignity of the individual.<sup>39</sup> Right to work is embodied in Article 41 of the Constitution, through which the state is directed to ensure to the people within the limits of its economic capacity and development (i) employment (ii) education and (iii) public assistance in cases of unemployment, old

age, sickness and disablement and in other cases of undeserved want. It is usual to refer to matters specified in this directive as measures of social security.

Right to work under Article is not an absolute right, but it is subject economic capacity of state. The state may not by affirmative action be compelled to provide adequate means of livelihood or work to the citizens, but it is moral obligation of the state to provide adequate means of livelihood and in turn, proper job to the human beings to earn their livelihood. Art. 41 is also connected with Article 47 which enjoins on the state to consider the raising of the level of nutrition and standard of bonded labourers, whose earning are just sufficient to provide them with few Chapatis of Jowar and Chutney of red chillies and salt every day of every season. Level of nutrution can only be provided by providing them living wages under Article 43. A living wage is such wage, which enables the male earner to provide himself and his family not merely the bare essentials of food, clothing and shelter, but a measure of frugal comfort including education for children, protection against ill health, requirements of essential social needs and a measure of insurance against the more important misfortunes including old age.<sup>40</sup> Art. 43 of our Constitution has adopted as one of the Directive Principles of State Policy regarding 'Living Wage' etc

for workers as:

"The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular, the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas."

Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the public and, therefore, to the healthy progress of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity.<sup>41</sup> Considering the question of wages in the background of the Directive Principles of state policy, a wage structure should serve to promote a fair remuneration to labour ensuring due social dignity, personality and security, a fair return to capital and strengthen incentives to efficiency, without being unmindful of the legitimate interest and expectation of the consumer in the matter of prices.<sup>42</sup>

The concept of 'Living Wage' has been discussed by the Supreme Court in Standard Vacuum Refining Co. of India and Express News Papers <sup>44</sup> case. The idea is that every workman shall have a wage which will maintain him to the highest state industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well being, enough to enable him to qualify to discharge his duties as a citizen. The amount of living wage in money terms will vary as between trade and trade. It is in this broad and idealistic sense that Article 43 of the Constitution refers to living wage when it enunciates the directive principle that the state, shall endeavour inter alia, to secure by suitable legislation or economic organisation or any other way, to all workers agricultural, industrial or otherwise, work a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Gajendragadkar, J.<sup>45</sup> has said: that 'the concept of living wage is not a static concept. It is expanding and the number of its constituents and their respective contents are bound to expand and widen with the development and growth of the national economy. That is why it would be impossible to attempt the task of determining the extent of the requirement of the said concept in the context of today in terms of rupees, annas and pies on the scanty material placed before us in the present proceedings. We apprehend that it would be inexpedient and

unwise to make an effort to concretise the said concept in monetary terms with any degree of definiteness or precision even if a fuller enquiry is held. Indeed it may be true to say that in an underdeveloped country, it would be idle to describe any wage structure as containing the ideal of living, wage though in some cases, wages paid by certain employers may appear to be higher than those paid by others.

The most useful principles to bonded labourers are contained in Article 39(e), (f) and 42. Article 39(e) provides: " that the health and strength of workers, men and women and the tender age of children are not abused and and that citizen are not forced by economic necessity to enter avocation unsuited to their age and strength." Article 39(f) provides: " that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment". Article 42 provides: "the state shall make provision for securing just and human conditions of work and maternity relief".

Unfortunately these provisions of the Directive Principles have not come effectively to rescue the bonded labourers. They are forced by economic necessity to enter avocation most unsuited to their age and strength. There are little opportunities or facilities for them to develop

in a healthy manner, there is no protection against exploitation and moral and material abandonment. Apart from industries and other organised sectors, bonded children are very commonly working in dhabas and way-side restaurants. If the child working in dhaba happens to drop some glass or kettle containing boiling tea he is sure to suffer burn but the employer instead of treating his burns will shower abuses for breaking the crockery. So also is the case with young bonded children employed as domestic servants. They are completely at the mercy of the employer. There is no limit to their working hour, no regulation of their diet and other living conditions. Then there are the child workers on roads, the newspaper hawkers and the shoe shine boys. Small children as young as 6-7 years, minor girls and boys are also exploited sexually, they're used for immoral purposes for begging and many other anti-social and illegal activities.<sup>46</sup>

In Bandhua Mukti Morcha case, the condition of bonded labourers working in some of stone quarries in Faridabad District has been described in the following words:

"Beside these cases of bonded labour, there are innumerable cases of fatal and serious injuries caused due to accidents while working in the mines while dynamiting the rocks or while crushing the stones. The stonedust pollution near the stone crushers is so various that many a valuable lives are lost due to tuberculosis while others are reduced to mere skeletons. The workers are not provided with any medical

care, what to speak of compensating the poor workers for injury or for death".<sup>47</sup>

The condition of bonded labourers in Mines are not much better. The residential accomodation is not worth the name - with scanty clothing, not even a thatched roof to fend against the icy winds and winter rain or against the scorching heat in mid summer , with impure and polluted drinking water accumulated during rainy season in the ditches, with absolutely no facilities for schooling or childcare, bearing all the hazard of nature and pollution and ill treatment, these thousands of sons and daughters of Mother India epitomise the wretched of the earth.<sup>48</sup>

Bonded labourers live a life worse than animals. The animals are at least free to roam about as they like and they can plunder or grab food whenever they are hungry, but these out castes of society are held in bondage robbed by their freedom and live either in hovels or under the open sky and be satisfied with whatever little food they can manage to get, to fill their hungry stomachs.<sup>49</sup> Since India is a country which has given a pride of place to the basic human rights and freedom in it's constitution in it's chapter on fundamental rights and under Art.39(e) , (f) and 42, The question may be raised whether or not the fundamental rights and directive principles enshrined in our constitution have any meaning to the bonded labourers, to whom food, drinking water, timely medical facilities and relief from disease and disaster still remains unavoidable.

Article 39-A<sup>50</sup> directs the State to ensure that the operation of the legal system promote justice, on a basis of equal opportunities and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This article was added to the Constitution pursuant to the new policy of the Government to give legal aid to economically backward classes of people. The bonded labourers are subjected to every kind of disability, therefore they are very much in the need of this new provision. As it has been held in Prem Chand Garg v. Excise Commissioner, that Court also comes under the definition of state, therefore courts are also under obligation to provide legal assistance and justice to the bonded labourers. Supreme Court has taken a lead in this respect and is doing tremendous job in providing free legal aid and justice to bonded labourers.

Under the Mines Act 1952, the Central Government is entrusted with the responsibility of securing compliance with the provisions of that Act and of the Mines Rules 1955 and other Rules and Regulations made under that Act. It is the primary obligation of the Central Government to ensure that these provisions are complied with by the mine lessees and stone crusher owners.<sup>52</sup>

The state governments are also under an obligation to



take all necessary steps for the purpose of securing compliance with the provisions of the Mines Act. Mine lessees and the contractors are also under the obligation to follow the provisions of Mines Act 1952 and also the provisions of other labour laws both Central and State as are applicable to the workmen engaged in mines and quarries, relating to the provisions of drinking water, rest shelters, dwelling house, latrines and first aid and medical facilities in particular and other safety and welfare provisions in general, to the satisfaction to the competent authorities under the aforesaid Acts, Rules and Regulations and also to the satisfaction of District Magistrate concerned.

Contract Labour Act imposes duty on every contractor to provide facilities and if any amenity required to be provided under sections 16,17,18 or 19 or not provided by the contractor, the obligation to provide such amenity rests on the principal employer.<sup>53</sup>

The Inter-State Migrant Workmen Act is a piece of social welfare legislation intended to effectuate the Directive Principles of State Policy and ensure decent living and working conditions for the workmen, specially when they come from other states and are in a totally strange environment when by reason of their poverty, ignorance and illiteracy, they would be totally unorganised

and helpless and would become easy victim of exploitation. This legislations must be given broad and expansive interpretation to advance remedy, specially when the workmen are recruited or employed by the Jamadar or Thekedar. It's sections 17 and 18 makes the principal employer liable to make payment of wages to the migrant workmen employment by the contractor and also to pay the allowances provided under Sections 14 and 15. Principal employer shall also be liable to provide the facilities specified in section 16 to such migrant workmen, where the contractor fails to do so and these obligations can also be enforced against Government.<sup>54</sup>

In spite of Article 24 of our Constitution, efforts are being made by our legislators and indeed there are many provisions in the various statutes pertaining to child workers, providing for welfare measures and safeguards for children. The most important of all efforts in the Child Labour (Prohibition and Regulation Act, 1981). But the practical enforcement belies the expectations of the law-makers. Despite the hope aroused of some improvement in the lot of bonded child workers the enactment of the Child Labour Act has not activated either the State Government or the Central Government to any sort of purposive action. The enactment is ineffective in protecting children force from exploitation. The serious omission in the legislation relates to enforcement machinery, the

laxity of which has enabled employers to circumvent the provisions of the law with impunity. In the absence of an efficient and rigorous inspection machinery, nothing prevents the employer from flouting the legal provisions in the full knowledge that the child workers themselves will become willing accomplice in covering it up.<sup>55</sup>

The Constitution of India contains enough provisions for bonded labourers both of a mandatory and directory ( i.e., Fundamental Rights and Directive Principles) nature to protect their rights. Our Constitution expresses a commitment to realize the goal distributive justice through socio-economic reform. Our country faced innumerable problems of a gigantic nature and efforts by the government and judiciary have constantly been directed to solve these problems. Thus it was inevitable that one day in the time scale of the life of the nation the problem of bonded labour had to be attacked vigorously so that progress may be made to extend the benefits of independence to a large number of our own suffering brethren. No doubt, this effort came only after a considerable period but it is a natural consequence of the fact that everything can not be done at one time. The interest of bonded labourers certainly protected through Fundamental Rights and Directive Principles of the State Policy. But due to failure of execution machinery their rights could not be protected.

Finally it may also be mentioned here that often the functionaries of the state are in sympathy with the exploiters and their efforts may satisfy the form but never the substance. Moreover, those officers who are really interested in eradicating these social evil are thoroughly discouraged in their efforts by the pressures exerted by the vested interest. These pressures may vary in shape and nature, for example, political pressure, economic pressure, pressure coming from their own superiors in myriad forms like transfers, bribery, coercion through violence, vexatious litigation etc. Human history is full of such instances and the heartening feature is that given the will and sustain efforts right triumphs over evil. Though much has been achieved through Fundamental Rights and Directive Principles, still much more is to be achieved in spite of positive approach by the judiciary in cases of bonded labour.

NOTES AND REFERENCES

1. Constituent Assembly Debates, Vol.VII,P. 804
2. Ibid., p. 805
3. Ibid., p. 804
4. Ibid, p. 811
5. Ibid., p. 809
6. Ibid., pp. 810-811
7. See S. Vasudevan v. S.D. Mittal,AIR 1962,Bom.,p.53  
at p. 67
8. AIR commentories on the 'Constitution of India,Vol.II,  
p. 436, 1970 Ed.
9. M.P. Jain , Indian Constitutional Law, p. 525, 1978 Ed.
10. See Suraj Nardin v. State of Madhya Pradesh,AIR 1960  
M.P., p. 303
11. H.M. Seervai, Constitutional Law of India,Vol.I P. 894  
1983 Ed.
12. Sharma Bai v. Uttar Pradesh,AIR 1959, All. 57
13. Supra, Note 9
14. AIR 1982 S.C. 1473
15. M.R. Madhav Menon, "Courts and the Poor", The Hindu,  
Nov. 16, 1982
16. Y.R. Haragopal Reddy, "Freedom from Bondage", LL.J.  
Vol. 16, 1983, July-Dec.p. 149 at. p.153
17. Maneka Gandhi v. Union of India, AIR 1978,S.C. 597
18. See Peoples Union for Democratic Rights v. Union of  
India, AIR, 1982 S.C. 1473
19. Ibid., P. 1488; Bailly v. Alabama (1910) U.S. 219,  
13th Amendment of the U.S. Constitution
20. Ibid.
21. Ibid., p. 1489

22. AIR 1982, S.C. 1473 at P. 1490
23. Ibid.
24. Ibid.
25. AIR 1982, S.C. 1473
26. Ibid., P. 1489
27. AIR 1983, S.C. 328
28. Ibid., at PP. 333-334
29. AIR 1983, S.C. 1155
30. Dr. J.N. Pandey, Constitutional Law of India,  
P. 267, 1994 Ed.
31. Minerva Mills Ltd. v. Union of India, 1980  
3 SCC 625 at 704-5. Hereinafter referred  
as Minerva Mills case.
32. AIR 1951, S.C. 226
33. Mumbai Kamgar Sabha v. Abdul Bhai; AIR 1976  
S.C. 1455. Also see U.P.S.E.B. v. Hari  
Shankar, AIR 1979 S.C. 65
34. In Re Kerala Education Bill, AIR 1958, S.C. 956
35. AIR 1978, S.C. 1461
36. (1993) 1 S.C.C. 645
37. Kharak Singh v. State of U.P., AIR 1963, S.C. 1295;  
Maneka Gandhi v. Union of India (1978) 1 S.C.C.  
248, Francis Coralie Mullin v. Administrator,  
Union Territory of Delhi and Others (1981)  
1 S.C.C. 608; Peoples Union for Democratic  
Rights v. Union of India (1982) 3 S.S.C. 235;  
Bundhwa Mukti Morcha v. Union of India (1984)  
3 S.C.C. 161; Neerja Chaudhari v. State of M.P.  
(1984) 3 S.S.C. 243; Olga Tellis v. Bombay  
Municipal Corporation (1985) 3 S.C.C. 545

38. Olga Tellis v. Bombay Municipal Corporation (1958)  
3 S.S.C. 549
39. Supra, Note 35
40. M.P. Jain, Indian Constitutional Law, P. 745, 1987 Ed.
41. Y.A. Mamarde v. Authority under the Minimum Wages Act,  
AIR 1972, S.C. 1721
42. Polychem Ltd. R.D. Tulpule, AIR 1972, S.C. 1967
43. Standard Vacuum Refining Co. of India v. Workmen,  
AIR 1961, S.C. 895
44. Express Newspaper (Pvt.) Ltd. v. Union of India,  
AIR, 1958, S.C. 578
45. Supra, Note 43
46. S.K. Singh, Bonded Labour and the Law, P. 214, 1994 Ed.
47. Bandhua Mukti Morcha v. Union of India (1984) 3 S.C.C.  
177
48. Ibid.
49. Ibid., P. 174
50. Inserted by Constitution, 42nd Amendment Act, 1976,  
Section 8 (w.e.f. 3rd January, 1977).
51. A.I.R. 1963, S.C. 996
52. Supra, Note 47 at P. 194
53. Contract Labour (Regulation & Abolition) Act 1970,  
Section 20.
54. Cit. Supra, Note 46 P. 218
55. Ibid., P. 219

CHAPTER - III

BONDED LABOUR SYSTEM (ABOLITION)

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BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

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(1) LEGISLATION - A NECESSITY:

The expression "bounded Labour" is an euphemism and in plain language it means slavery. It is strange that the Government of India thought abolishing slavery only after a quarter of a century of the establishment of a free democratic republic. Slave labour has been made an offence. Even under the Penal code and contracts that bind a person or his heirs to serve another for life or for a long period in consideration of some benefits conferred on them were refused to be enforced by courts of law as being opposed to public policy. There were and still there are certain services which are performed in a village community by certain families as a hereditary service. But they are more in the nature of a right and privilege conferred on certain sections of people in the village community and they are sufficiently rewarded for their services by the way of gift or land or share in crop or other emoluments. These can not be considered slavery or bonded labour. Certain hereditary services like Devadasis, who were forced to dance in temples or during processions of the deity has become obsolete certain other services like that of pipers, barbers, dhobis, grave-diggers and

certain classes of the indentured labour, restricted to particular caste or community in a primitive society has lost of much their significance which the advancement of social concepts.<sup>1</sup>

After Independence, the spread of a ideals of social progress and human betterment forced the Government to enact Labour Laws for the welfare of the society to serve the occan of humanity. It appears that the though the Constitution was enacted as far back in 1950 and many years lapsed since then no serious effort was made to give effect to Article 23 and to stamp out the evil particle of bounded labour. It was only in 1976 that Parliament enacted the Bonded Labour System (Abolition) Act, 1976 providing the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker system of the people.<sup>2</sup> This has been enacted in the guidelines of the Directive Principles of State Policy with a view to ensuring human dignity to the bonded labourers.

An ordinance entitled the Bonded Labour System (Abolition) Ordinance abolishing bonded labour with immediate effect was promulgated on October 24, 1975. Later the Bonded Labour System (Abolition) Bill was passed by both the Houses of Parliament and receive the assent of the President on Feb. 9, 1976 and the Act came into

force on the 25th day of October 1976 and the subject of bounded labour has been mentioned in the concurrent list given in the 7th Schedule of the Constitution of India.

(ii) STATUTORY DEFINITION OF BONDED LABOUR:

The statutory definition of bonded labour is as follows:

Section 2(e) "bonded labour" means any labour or Service rendered under bonded labour system,

- (f) "bonded labourer" means a labourer who incurs, or has, or presumed to have incurred a bonded debt;
- (g) "bonded labour system" means the system of forced, or partly forced labour under which a debtor enters, or has, or is presume to have, entered into an agreement with the creditor to the effect that -

- (i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any due as such advance, or

- (ii) in pursuance of any customary or social obligation, or

- (iii) in pursuance of an obligation evolving on him by succession, or

- (iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

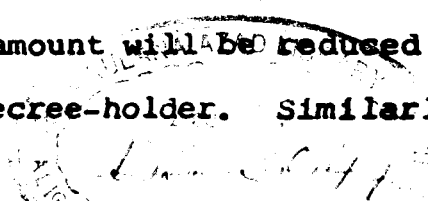
- (v) by reason of his birth in any particular caste or community, he would —

- (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specific period or for an unspecified period, either without wages or for nominal, wages, or
- (2) forfeit the freedom of employment or other means of livelihood for a specific period or  
\* for an unspecified period, or
- (3) forfeit the right to move freely through out the territory of India, or
- (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.

The expression "nominal wages" is defined in Section 2(1) to mean, in relation to any labour or wage which is less than:

- (a) the minimum wages fixed by the Govt. in relation to same or similar labour under any law for the time being enforced and
- (b) where no such minimum wages has been fixed in relation to any form of labour, the wages that are normally paid for the same or similar labour, to the labourers working in the same locality.

All customs, traditions, contracts, agreements or other instruments providing for bonded labour have been declared to be void. Under Section 5 of the Act liability to repay bonded debt stands extinguished. The right to move the court for the recovery of a bonded debt has also been abolished. Every decree or order passed before the commencement of the Act and not fully satisfied will be treated as fully satisfied. Every attachment of property for the recovery of any bonded debt shall be treated as vacated. Where some property has been seized from bonded labourers as a result of attachment it shall be returned to him as soon as practicable. Where a creditor has been forcibly taken possession of the property of a bonded labourer, it shall be restored to him. Where restoration of property is not made within 30 days from the date of commencement, the aggrieved person may apply to an authority for such possession. The creditor will be given a reasonable opportunity of being heard by the appropriate authority before passing an order for the restoration of possession of the property involved. Such an order will be deemed to be an order by a civil court. It is clearly declared that the sale of property of a bonded labourer will not be affected by the Act. However a bonded labourer within a period of five years may apply for setting aside such a sale but for this purpose he must deposit in the Court an amount of money equal to that for which property was auctioned. But this amount ~~will be reduced~~ by mesne profits received by the decree-holder. Similarly, the



property of a bonded labourer subject to mortgage charge lien or othe incumbrances shall stands freed. A freed bonded labourer is not to be evicted from any house occupied by him as part of consideration for the bonded labour. Where such eviction has taken place the executive magistrate shall as soon as possible restore the possession of such residential premises to the bonded labourer.

All creditors are required not to accept any bonded debts which stand extinguished. If any one commits breach of this rule than he will be liable to punishment by the way of imprisonment which may extent to three years and also with fine.<sup>3</sup> The court imposing any such punishment may also direct a creditor to deposit in the court the sum accepted by him to be refunded to the bonded labourer.

(iii) STATUTORY DEFINITION AND THE SUPREME COURT:

The Supreme Court after throughly discussing the statutory definition of bonded labour of the Bonded Labour System (Abolition) Act, 1976 widened the statutory definition of the bonded labour to its logical end in Bandhua Mukti Morca v. Union of India<sup>4</sup>. The definition(given by Justice Bhagwati) reads as follows:

"It is of course true that strictly speaking, a bonded labourer means a labourer who incurs or has or is presumed to have incurred a bonded debt and a bonded debt means an advance obtained or presumed to have been obtained by a bonded labourer under or in pursuance of the bonded labour system and it would therefore

appear that before a labourer can be regarded as a bonded labourer, he must not only be forced to provide labour to the employer but he must have also received an advance or other economic consideration from the employer unless he is made to provide forced labour in pursuance of any custom or social obligation or by reason of his birth in any particular caste or community".<sup>5</sup>

It is further held that, "whenever" it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore a bonded labourer".<sup>6</sup>

The Supreme Court categorically declared in Bandhua Mukti Morcha that any bonded labourer being made to provide forced labour other than as a social custom or by his birth he is deemed to receive some economic consideration or some advance in his presumption may be rebutted by the employer or the landlord and also by the state government concerned, if it so chooses but unless and until satisfactory evidence is produced for rebutting this presumption the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit under the provisions of the Bonded Labour System (Abolition) Act, 1976. In Neeraja Chaudhry v. State of Madhya Pradesh<sup>7</sup> the Court reiterated its stand in Bandhua Mukti Morcha v. Union of India<sup>9</sup> to the effect that

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the burden of proof which is embodied in section 15 of the Bonded Labour System (Abolition) Act 1976 observed that, whenever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration the presumption would be that he is a bonded labourer unless the employer or the State Government is in a position to prove otherwise.<sup>10</sup>

The definition of bonded labour has its own contradictions. The operation part is, if a labourer is paid, "no remuneration or nominal remuneration the presumption would be he is a bonded labourer". Nominal can only be determined, vis-a-vis some norm of minimum wage. Apart from the fact that the fixing of the minimum wages is itself not regarded as satisfactory, even this norm has been found, unenforceable in large part of the country. Especially in Agricultural occupations during the non-seasonal periods wage rates tend to fall much below the minimum. At these low wages, not only the landless labourers but also marginal farmers are found to offer their labour. Thus, a large number of rural population could be categorised as bonded. The question needs to be considered as to whether the payment of less than a "minimum wage" is a sign of debt burdened bondage or of the coercion by the market as formed by our presently structured institutions. Any how, the Supreme Court succeeded to close that channel of escape previously happily availed



by the masters. As far as contract labourers and Inter State Migrant Workmen are concerned, they will not be further required to be named as bonded labourer after the payment of minimum wages.

(iv) OBJECTS AND REASONS OF THE ACT:

The objects and reasons appended to the Bill (Act) reads as under:

There still exists in different parts of the country a system of usury under which the debtor or his descendent or dependents have to work for the creditor without reasonable wages or with one wages in order to extinguish the debt. At times, several generations work under bondage for the repayment of a pattry sum which had been taken by some remote ancestor. The interest rates are exorbitant and such bondage can not be interpreted as the result of any legitimate contract or agreement. The system implies the infringement of the basic human rights and destruction of the dignity of human labour.<sup>11</sup>

The object of the Act is to provide for welfare of the bonded labourers who are supposed to be in a weak position by the reason of their being in unbargaining conditions. An important object of the Act is also to regular the conditions of the bonded labourers for the matters connected their with. Previously the bonded labourers were unorganised unable to look after their own interest. In the passing of this specific Act removed, aims at removing aforesaid inhibitions of the bonded

labourers, psychologically depressed and physically emaciated while the exploiters have all the resources at their command, the exploited ones have none to look up to.

The objectives of the Bonded Labour Legislation may also be pointed out categorically in other words as follows:<sup>12</sup>

- (1) The Act was enacted with the view to preventing the continuance of any form of bonded labour (forced labour).
- (2) The Act was also enacted with a view to preventing the economic and physical exploitation of the weaker section in the community for matters connected therewith or incidental thereto.
- (3) This was made under the guiding principles of Directive Principles with the amalgamated influence of Fundamental Rights and also to assure the dignity of the individual which is heralded in the preamble of our Constitution.
- (4) The open objective of the Act is identification, release, and rehabilitation of bonded labourers which are fundamental necessities for the liberty and freedom of the individual.
- (5) This Act is also a part of the labour welfare legislation to protect the labour community and to assist

them in march towards the attainment of economic and social justice which is assured by and for the people of India.

In addition to the enactment of Bonded labour System (Abolition) Act, 1976 following guidelines have been issued by the Centre to the States for the speedy implementation of the Law and the early rehabilitation of the bonded labourers<sup>13</sup>

- (1) Finalization of the court cases at the earliest on the summary trial basis.
- (2) Allotment of vacant land falling surplus under the schemes meant for landless labourers.
- (3) Provision of loan facility for buying varied kinds of agricultural input to cultivate the land allotted to them.
- (4) Priority to the employment of freed bonded workers in various projects of public works, irrigation and other departments.
- (5) Sanction of immediate financial relief to emancipated bonded labourers pending allotment to surplus land and for this authority to be given to the District Magistrate to spend at least Rs. 1000/- per family.
- (6) Immediate beginning of the time bound programme for the rehabilitation of freed bonded labourers in the Integrated Tribal Development Projects and the tribal sub-plan.

- (7) Inclusion of separate programme for those freed bonded labourers who reside outside the tribal sub-plan area.

For the passing of the legislation the reason was that many agricultural labourers and marginal farmers were need to get heavily indebted and thus had become bonded on account to lack of financial , resources for meeting unavoidable social. Obligations like expenses of wedding and expenses for funerals. In order to meet these expences they had to enter into an agreement with the landlords. It can therefore be said that the landlords had to take undue advantages of the weak position of the farmers.

For the passing of the Act the reason was also that the conditions of survival of labourer are becoming difficult partly on account of deforestation, soil erosin, erratic rain fall and other factors. What is more most of resources of the area including agricultural lands, specially irrigated land is concentrated in few hands, similarly the work of Timber, Minor forest produce, Minor forest produce, Minor minerals are also organised in such a way as to benefit a few. Relief work at the time of frequent droughts it scanty, under such conditions bonded labour is almost bound to exist. The reason is that the poorest people of these region are in such an unfortunate position that they have to borrow from local big land owners contractors etc. even to meet their minimum

needs and this being the extent of dependence have to Rule of Law is meant for them also. Now the question may be raised whether or not the Fundamental Rights enshrined in our Constitution have any meaning to the millions of our people whom food, drinking water, timely medical facilities and relief from disease and disaster, education and job opportunities still remain unavoidable since India is one of those countries which has given a pride of place to the basic human rights and freedoms in its Constitution. There may be need for providing then a protective cover against the possibility of atrocities being committed on them by the powerful and influential groups in the village community who once held them in bondage dominate the village life even today.

(v) SALIENT FEATURES OF THE ACT:

The Bonded Labour System (Abolition) Act 1976 has so many features in it. It define bonded labour in very clear term not only by naming some of the forms of forced labour, but also by stating other circumstances under which a bond would be presumed. In this behalf Sec.2, Sub-section(b), (g) and (i) call for special commendation. The parameters of forced labour are so clearly defined that it become very easy to distinguish

between a person of his own violation and some one who is under any form of pressure to work in a position of humiliating subordination to his master.<sup>14</sup>

The Act not only abolishes bonded labour, but declares void any agreement or custom in this behalf. It discharges all debts, releases all property of the bonded labourers, protects freed labourers from eviction from their homestead and makes it a criminal offence for creditor to accept payment against an extinguished debt.<sup>15</sup>

The Act goes further, recognising that normal judicial procedures are not only time consuming but also heavily weighted in favour of the rich, the Act places a very special responsibility on the District Magistrate and the Executive Magistrate to identify and free bonded labour and to punish those who indulge in the practice. There are severe panalities prescribed in Chapter VI of the Act and, despite the statutory separation of the executive from the judiciary, the power to try offences has been vested in Executive Magistrate. All offences are cognizable and trials are by summary procedure. In other words, the district officials who are charged with the responsibility of implementing the Act have no excuse to offer if the practice continues to prevail in their districts.

Chapter IV of the Act in fact legally imposes on the Act on the District Magistrate the duty to enforce the Act, which means that if bonded labour continues to prevail, disciplinary action can be initiated against the District Magistrate. Such responsibility is very rarely conferred on an officer by designation.<sup>16</sup>

In order that there may be constant public monitoring of the enforcement of the Act, the Act provides for the mandatory constitution of Vigilance Committees for every district and sub-division. Representation on these Committees, is of the D.M. and S.D.M. as Chairman, members of the scheduled castes and scheduled tribes, social workers, non-official agencies connected with rural development and a representative of financial institutions. Not only does the Vigilance Committee have wide power, but it can nominate a member to defend any suit against freed bonded labourers. Such a member would be deemed to be the authorised agent of the labourer. The mere statement by a bonded labourer automatically possess the burden of disproving the bond on to the creditor. It would be fair to state that this is one Act which, if properly implemented, extends the protection of law to the poorest of the poor on a footing of equality with a feudal landlord.<sup>17</sup>

Regulation apart, the Act provide the positive rehabilitation of freed labourers. Section 11 of the Act

places on the District Magistrate the duty of ensuring that freed bonded labourers are rehabilitated and their economic interests protected through access to credit and provision of work which will make it unnecessary for them ever to go under bond again. Section 11 of the Act required the Vigilance Committees to provide for economic and social rehabilitation and to coordinate the functions of rural banks and cooperatives societies in order that they may canalise adequate credit to freed bonded labourers.<sup>18</sup>

Salient feature of the Bonded Labour System (Abolition) Act 1976 may categorically be pointed out in other words as under:<sup>19</sup>

(1) The primary and unique feature is the abolition of bonded labour, which the very title of the enactment signifies. It renders every covenant or custom or the like relating to bonded labour wholly ineffective and void. Similarly, it extinguished the liability of every bonded labourer to repay the debt.

(2) Any attachment made prior to this Act stood vacated as such the possession of the property is restored to the bonded labourer. Provided if such restoration is not made within 30 days from the commencement of this Act the aggrieved has a right to apply to the concerned authority, whose order shall be deemed to be an order passed by the Civil Court enforceable for



execution in the court of lowest pecuniary jurisdiction. The same is the case with the mortgaged or other encumberanced property, which shall be reverted to the possession of the bonded labourer. Even though, section 25 of the Act expressly bars the jurisdiction of the Civil Court, the aggrieved party can apply to the Civil Court for mesne profits in cases if there was any delay in the restoration of property in question.

(3) The Act expressly declares that the freed bonded labourer shall not be evicted, from any homestead or other residential premises under which he sheltered prior to its commencement and if so evicted, it is the duty of the Executive Magistrate in charge of the Sub-Division within which the residence is situated, to see that it is restored to the bonded labourer.

(4) It specifically confers power upon the State Government, to prescribe the power and the duty of the District Magistrate who in turn shall specify to the concerned officers subordinate to him for seeking proper implimentation or enforcement of the provisions of the Act in order to promote the welfare of the freed bonded babourers.

(5) It further imposes an obligation on State Government to provide for the constitution of the Vigilance Committees by an official Gazette Notification in each State, District and Sub-division whose composition shall be in accordance with section. The District Magistrate or a person nominated by him shall be the Chairman of Vigilance Committee.

(6) The Vigilance Committee shall carry on those function mentioned under section 14. It shall provide rehabilitation of the freed bonded labourers. Under Section 14(2) the Vigilance Committee is empowered to authorise one of its members, who shall in such cases be deemed to be an authorised agent, to defend the suit against a freed bonded labourer. It shall also conduct survey and keep an watchful eye. Hence, the functions discharged by the Vigilance Committee are of utmost importance.

(7) The Act made provisions for punishment under various heads. The normal punishment prescribed is imprisonment for a term which may extend to 3 years and also with a fine which may extend Rs. 2000/-. But in cases where there is failure or omission in restoration of possession of property the penalty is either imprisonment for a term which may extend to 1 year or with fine which extend to Rs. 1,000/- or with both.

- (8) It makes every offence under bonded labour system a cognizable and bailable one which shall be tried by Executive Magistrate, who shall be conferred with the powers of either a Judicial Magistrate of I class or II class.

NOTES AND REFERENCES

1. Anand K. Dubey, Social Justice and Bonded Force in India, PP 130-131, 1989 Ed.
2. Bandhua Mukti Morcha v. Union of India, AIR 1984 S.C. 802 at P. 805
3. Under section 9(2) of the Bonded Labour System (Abolition) Act, 1976
4. AIR 1984, S.C. 802
5. Ibid., at P. 826
6. Ibid., at P. 827
7. Ibid. at PP.826-27
8. AIR 1984, S.C. 1099 at P. 1103
9. Supra, Note 4
10. Supra , Note 8
11. Bonded Labour and its Abolition ,Volume 1:Report National Centre for Human Settlements and Environment ( N.C.H.S.E.) New Delhi, 1987, P.1
12. S.S. Prakash, Bonded Labour and Social Justice,P.70, 1990 Ed.
13. Ibid. at PP. 70-71
14. Supra Note ,11 at P .3
15. Ibid. at P. 3
16. Ibid. at P. 4
17. Ibid.,at PP.4-5
18. Ibid.,at P.5
19. supra,Note 12, PP. 71-72

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CHAPTER - IV

BONDED LABOUR SYSTEM AND ITS CHALLENGES -

ASSESSMENT AND EVALUATION

BONDED LABOUR SYSTEM AND ITS CHALLENGES

ASSESSMENT AND EVALUATION

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(i) IDENTIFICATION OF BONDED LABOURER:

To provide freedom to bonded labourers, the first step required is the identification. After identification they have to be released, after release they will require immediate relief, and in the end, they have to be properly rehabilitated so that they may not again relapse into bondage. The main problem in the identification of the bonded labourers have arisen due to wrong interpretation of the bonded labour system, given in the Act. The State Governments always try to search debtor creditor relationship between the bonded labourer and their employer, whereas in the definition this type of bondage is one of the instance of the bonded labour system. At the same time social welfare legislation should be given liberal construction to cover all types of evil intended by the legislatures, "It is also a well established rule of interpretation that if plain meaning of a statute is incapable of giving the intention of the

legislature, the object and purpose the statute or reason and spirit behind it should be taken into account.<sup>1</sup>

If we apply this rule for interpreting section 2(g) of the Act, it can very well be said that before enactment of Article 23 of our Constitution, there was no definite law to abolish forced labour which was, mischief, which was tried to be cured by Article 23 and section 2(g) of the Act. Reason of the remedy was, the practice of forced labour was inhuman. Therefore, under section 2(g) of the Act, every type of forced labour should be covered. The Supreme Court also adopted such a purposive construction of section 2(g) in Bandhua Mukti case,<sup>2</sup> where the court has held that if a labourer is providing forced labour, the debtor and the creditor relationship will be presumed. In Neeraja Chaudhari's case,<sup>3</sup> It was already decided by the Court that, "if the payment is less than the minimum wages, a labourer will be known as forced labour". Thus if there is payment, less than minimum wages to a labourer, he will be known as bonded labourer. This definition must be followed by the Central Government, State Government, bureaucracy and other Governmental and social action groups, who are engaged in the emancipation of the bonded labourers.

It has also been tried by the legislature from time to time to expand the ambit and scope of the bondage and

include the other labourers who are very akin to bonded labourers. Such labourers are contract labourers and Inter-State migrant labourers. A Bill known as Bonded Labour System (Abolition) Amendment Bill 1984 was introduced in the Parliament for this purpose. While discussing the bill in the Rajya Sabha Shrimati Usha Malhotra, M.P. said, "Now the migrant and the contract labourers who work like the bonded labourers will be deemed to be working under the bonded labour system".<sup>4</sup> Thus, contract labourer and Inter-state migrant workmen under the definition of Bonded labourer, the above Bill was enacted into Act No.73 of 1985 by which an explanation was added to section 2(g) of the Act, which has removed doubt from the minds of authorities responsible for emancipation of bonded labourers.<sup>5</sup>

It is incredible that some State-Government are not admitting the existence of bonded labour even though it is prevailing. Bhagwati, J., aptly remarked this in Bandhua Mukti Morcha v. Union of India<sup>6</sup>, that, "It is not uncommon to find that the administration in some states are not willing to admit the existence of bonded labour even though it exists in their territory and there is incontrovertible evidence that it does so exist."<sup>7</sup> Further it was observed by the Judge, we fail to see why the administration should feel shy in admitting the existence of bonded labour, it because



is a slur on the administration but its failure to take note of it and to take all necessary steps for the purpose of putting an end to the bonded labour system by the quickly identifying.<sup>8</sup>

The way of style of the State machinery can be imagin as it was observed by the Court:

"It is true that the existence of bonded labour cannot be discovered and wiped out solely relying on the action taken by M.L.A's, or the bureaucrats or even the Panchayat but their role in eradicating this problem can not be ignored. The Commissioners and Collectors have multifarious duties to attend to and even if they are anxious to help in eradicating the vice of bonded labour system, which we are sure, they are, they would not find time to make any personal inquiry or investigation but they would have to rely on subordinate officers such as Tehsildars and Patwaris and at many places the Patwaris and Tehsildars being either in sympathy with the exploiting class or lacking in social commitment or indifferent to the misery and suffering of the poor and the down-trodden, the task of identification ---- of bonded -- through the official machinery would be very difficult of achievement".<sup>9</sup>

The State Governments with their Ostrich-like attitude busy their heads in the sand, ignoring and neglecting the existence of bonded labour. The goofy attitude of our bureaucrats in identification of bonded labourers was exemplified in the anecdote remarked by Justice P.N. Bhagwati in Neeraja Chaudhry v. State of Madhya Pradesh.<sup>10</sup> The State Governments which, under our Constitutional scheme are charged with the mission of

bringing about a new socio-economic order where there will be social and economic order where there will be social and economic justice for everyone and equality of status and opportunity for all, were given direction by the Court for identification of bonded labourers. Even when the courts ask for identification the only answer that was received from the State Government was "Steps had been taken and were being taken by the State Government for identification"....<sup>11</sup> By the order of the Court a Tehsildar went to a village sitting on the dias along with the landlords by his side, he started enquiring of the labourers whether they are bonded or not and when the labourers, obviously inhibited and terrified by the presence of landlords said that they were not bonded but they are working freely and voluntarily and it was so recorded by the Tehsildar in his report.

Further the State Government points out that very often vested interests veil successfully the status of bonded labourers and thus obstruct the process of identification; the labourers themselves are not educated enough to come and lodge a complaint. But the ugly reality is, whenever the bonded labourers muster courage and come forward there were instances that they were physically be laboured workmen were not only physically tortured, but also they were harassed for the fictitious debts. Even if they lodged a police complaint against the contractors it proved to be abortive.<sup>13</sup>

The comparative picture of number of bonded labourers as estimated by the Gandhi Peace Foundation(1979-80). National Sample Survey Organisation(1978-79) and the

State Governments (as on 31.3.89) is given in the TABLE-1.

TABLE - 1

NUMBER OF BONDED LABOURERS AS ESTIMATED BY  
GANDHI PEACE FOUNDATION. NATIONAL SAMPLE  
SURVEY ORGANIZATION AND STATE GOVERNMENTS

Sl.No.	State Govt.	As esti- mated by Gandhi Peace Founda- tion (1979-80)	'As esti- mated by NSSO (1978-79)	As identi- fied by Governments (as on 31.3.89)	% of State Survey to CPF
1.	Andhra Pradesh	3,25,000	7,300	33,954	10.5
2.	Assam	-	4,400	-	-
3.	Bihar	1,11,000	1,02,400	12,388	11.2
4.	Gujrat	1,71,000	4,200	64	0.4
5.	Haryana	-	12,900	477	-
6.	Himachal Pra- desh	-	-	-	-
7.	Jammu & Kashmir	-	900	-	-
8.	Karnataka	1,93,00	14,100	62,689	32.5
9.	Kerala	-	400	823	-
10.	Madhya Pradesh	5,00,000	1,16,200	10,895	2.2
11.	Maharashtra	1,00,000	4,300	1,331	1.3
12.	Manipur	-	-	-	-
13.	Meghalaya	-	-	-	-
14.	Nagaland	-	-	-	-
15.	Orissa	3,50,000	5,400	48,750	13.9
16.	Punjab	-	4,300	-	-
17.	Rajasthan	67,00	2,400	7,127	10.6
18.	Tamil Nadu	2,50,000	12,500	37,955	15.2
19.	Tripura	-	-	-	-
20.	Uttar Pradesh	5,50,000	31,700	26,155	4.5
21.	West Bengal	-	21,600	-	-
22.	Union Territories-	-	-	-	-
All India		26,17,000	3,45,000	2,42,618	9.3

Source: . Final Report January, 1951 of the Gandhi Peace Founda-  
 .. Sarvekshan Vol.11 No.4 April 1979  
 ... Ministry of Labour Govt. of India. Annual  
 Report 1989-90 Vol. 1, New Delhi

(11) LIBERATION OF BONDED LABOURER:

After the identification of bonded labourers the next step to emancipate bonded labourers is to release them from bondage. A release is a discharge of an existing obligation or right or action, by person in whom the obligation the giving up or abandoning of a claim or right to the person against whom the claim exists or the right is to be enforced or exercised. Release in respect of bonded labourers means stoppage of work which was otherwise deemed obligatory in pursuance of any outstanding debt or a bond pertaining to such debt and also an understanding and accepting by the bonded labourers that such debt stood extinguished and he has no liability to render labour or service to the creditor, or to repay the debt to him. With the passage of the Act, the bonded labour system has been abolished and every bonded labour has been freed and discharged from any obligation to render any bonded labour.<sup>14</sup> The legislative provisions are not able to provide real and effective release of the bonded labourers. The Act provided for the release of bonded labourers from the very date of it's commencement. The system date of it's commencement. The system stood abolished and every bonded labourer freed.<sup>15</sup>

Inspite of the provisions of the Act in practice the bonded labourers have not even heard about the Act and it's provisions. What to say of bonded labourers, even the creditor/master does not know about the Act.

and its provisions. What to say of bonded labourers, even the Creditor/master does not know about the Act. Regarding the release Shri Sode Ramaiah (Bhadrachalam) M.P. said:

"Many legislations were made in the past to rescue them and help them, but all the acts remained on paper. There was hardly any change in the living conditions of these people. If they liberated ten bonded labourers, another twenty persons joined the rank. Thus it is one step forward and two step backwards. What is the reason for increase in the number of bonded labourer in the country? Unless this reason is probed into, it is no use making many legislations.<sup>16</sup>

Certain release procedures have also been prescribed by Government. Broadly speaking the elements of the release procedure are:

- (1) Issue of a formal certificate of release from bondage so that a freed labourer can be easily identified whilst formulating schemes for his rehabilitation.<sup>17</sup>
- (2) The freed bonded labourer are entitled to rehabilitation, with the central Government having prescribed a ceiling limit of Rs. 6250/- per beneficiary as the amount to be spent on rehabilitation under the centrally sponsored scheme for rehabilitation of bonded labour. Of this, an amount of Rs. 500/- is to be released immediately as initial subsistence allowed.<sup>18</sup>
- (3) The released bonded labourers are to be identified as target of group for assistance under scheme such as Integrated Rural Development Programme, National

Rural. Employment Programme and  
the Rural Landless Employment  
Guarantee Programme.19

- (4) A scheme for rehabilitation is to be drawn up so that the released bonded labourers can be permanently rehabilitated.

There are a number of problems faced in the released in the bonded labourers. The following paragraph from a letter written by the Ministry of Labour on 16th October, 1983 to all State Governments highlights some of the problems:

"Related to the problem of release of the identified bonded labourers from bondage and issue of a formal certificate in support of the such release. It has been observed that hitherto a formal rigid and legalistic approach has been followed for securing such release. It has also been found from the field visits of senior officers of this ministry that for every case of release formal case reports are being opened and each case is being tried by a formal process of trial with the attendant procedure for recording of evidence. This is an endless process which is detrimental to the interests of the bonded labourer who due to his poverty, illiteracy of and social and economic backwardness can ill-afford to stand up to the tyranny of law and rigidity of the legal process. An evaluation report submitted to the ministry of labour indicate that identification and release of bonded labour are not simultaneous and that there is a gap ranging between 2 to 4 week in some other between the date of identification of bonded labourers from bondage, We have carefully considered the legal, administrative and the procedural aspects which are responsible

for this long time gap between identification and release. We feel that the only way out would be to have a summary trial immediately on receipt of a report from the concerned field agencies so that identification and release can be simultaneous. It is only when there is resistance from the keeper of bonded labour to such release (evaluation report has brought out instances of such obstructions of the landlord) that recourse to the procedure established by law may be taken and the case decided on merit. We consider this to be the only the practically way of reducing the time gap between identification and release which inturn will help in accelerating the pace of rehabilitation".<sup>20</sup>

(iii) REHABILITATION OF BONDED LABOURER:

After the identification and release, comes the question of rehabilitation of bonded labourers. Nowhere in the Act it is mentioned that the bounded labourers, when released, are entitled to rehabilitation as a matter of right. However there are some provisions which throw light on rehabilitation. Such as, bonded labourers shall not be evicted from their homestead or residential premises<sup>21</sup> and the evicted one shall be restored the possession of such residential premises.<sup>22</sup> Creditors were forbidden to accept any payment against any extinguished bonded debt.<sup>23</sup> The District Magistrate may be made duty bound to promote the welfare of freed labourers by securing and protecting the economic interest of such bounded labourer so that they may have not any occasion or reason to contract any further bonded debt.<sup>24</sup> The Act has further imposed a duty on every District Magistrate

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and the officers specified by him to enquire whether any bonded system or any other form of forced labour is being enforced by or on behalf of any person resident within the local limit of his jurisdiction and if, as a result of such enquiry, any person is found to be enforcing the bonded labour system or any other system of forced labour, he shall forthwith take such action as may be necessary to eradicate the enforcement of such forced labour.<sup>26</sup>

There are certain specific provisions regarding the rehabilitation of bonded labourers, e.g., Sec. 11 provides:

"The District Magistrate authorised by the State Government under Sec. 10 and the Officer specified by the District Magistrate under that section 'shall' as far as practicable, try to promote the welfare of the freed bonded labourers by securing and protecting the economic interests of each bonded labourer by securing and protecting the economic interests of each bonded labourer so that he may not have any occasion or reason to contract any further bonded debt."

The term "shall" is qualified by, "as far as practicable" - thereby vesting with the District Magistrate, the discretionary power to promote the welfare of the freed bonded labourers and to secure and protect their economic interest. There is doubt to say that it is a mandatory provision because the effect of the term, "as far as practicable", providing



the District Magistrate or the Officers specified by him to implement the provisions of the Act, with an excuse for not rehabilitating the bonded labourers, that it was not practicable. At the same place that word, "as far as practicable, try to promote", has created much faith in bureaucracy.<sup>27</sup> What the District Magistrate is to do is as far as practicable, try to promote the welfare of the freed bonded labourer. He free to say that he tried his level best to protect the interest of these people.<sup>28</sup>

The responsibility for rehabilitation of released bonded labourers rest with the State Governments who are the implimenting authorities under the bonded labour system (Abolition) Act 1976. According to the Annual report 1989-90 of the ministry of Labour Govt. of India, New Delhi, the incidence of bonded labour has been reported from 12 states, namely:- Andhra Pradesh, Bihar, Gujrat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh. All the identified bonded labourers identified and freed on 31.3.1989 was 242618 out of whom 210091 had been rehabilitated. About 11485 are not available for rehabilitation. A statement showing the state-wise position is given in the TABLE-2.

TABLE - 2

STATE-WISE DETAILS REGARDING  
RELEASE AND REHABILITATION  
OF BONDED LABOUR AS ON 31.3.1989

	Name of the State	Number of bonded labourers	
		Identified and released	Rehabilitated
1.	Andhra Pradesh	33.954	24.262
2.	Bihar	12.388	11.270
3.	Karnataka	62.689	50.768
4.	Madhya Pradesh	10.895	7.554
5.	Maharashtra	1.331	951
6.	Orissa	48.750	44.751
7.	Rajasthan	7.127	7.037
8.	Tamil Nadu	37.965	36.536
9.	Uttar Pradesh	26.155	26.054
10.	Kerala	823	823
11.	Haryana	477	21
12.	Gujarat	64	64
TOTAL		2.42.618	2.10.091

## Source:

Annual Report (1989-90) of Ministry of Labour,  
Government of India, para 9.15 to 9.25

Others are not available for rehabilitation in  
the State of Haryana.

REHABILITATION PROGRAMMERS -CENTRALLY SPONSORED  
SCHEMES, TRDP ETC.

Rehabilitation of bonded labourers was included as one of the specific items in the 20 Point Programme. The programme for economic upliftment and rehabilitation of bonded labourers needed to be followed up systematically so as to ensure that there was no relapse into bondage after release. To deal with these problems effectively, the Government of India formulated a rehabilitation programme in 1978-79. The main objectives of the programme were to identify, release and rehabilitate the bonded labourers under the Centrally Sponsored Scheme<sup>29</sup> as well as under the schemes operated by the State Governments. Both the Central and State Governments initiated various rehabilitation programmes for bonded labourers. The schemes approved for Central assistance are financed on a matching grant basis, i.e. 50 per cent by the State and 50 per cent by the Centre of the total cost of the approved schemes.

Rehabilitation of bonded labourers comprises two major components namely psychological and physical or economic rehabilitation. The economic costs of rehabilitation was estimated upto Rs. 4000 per bonded labourer in 1978-79. But in view of rising prices, the cost of rehabilitation was increased from Rs. 4000 to Rs. 6,250 per

bonded labourer in February, 1986. However, it is very difficult to measure the psychological costs of rehabilitation. Psychological rehabilitation mainly involves the process of building confidence among the released bonded labourers. In this, the efforts of Government and non-Government organisations have to work, energetically as well as synergetically. Apart from this financial assistance, the scheme also provides for grant of Rs. 300 as subsistence allowance to the released bonded labour immediately after his release from bondage to enable him to pull on fill the framing and implementation of the scheme for his permanent rehabilitation.

The physical or economic schemes for rehabilitation being taken up in the various States could be categorised as follows:

- (a) Land Based Schemes - Allotment of land, provision of agricultural inputs, supply of draught animals, construction of irrigation wells and reclamation of land.
- (b) Non-Land Based Schemes - Supply of buffaloes, cows, goats, sheep and poultry birds with extension of Veterinary services, institutional linking up of marketing etc.
- (c) Skill Craft Based Schemes - Supply of sewing machines, carpentry sets, training in dyeing, leather works and laundry etc.

(d) Other Schemes - Cart and animals, rickshaws and tom-toms and consumption loans granted by banks for consumption purposes like family ceremonies ( marriage, birth, deaths) etc.

The above rehabilitation schemes have listed in detail in the guidelines issued by the Ministry of Labour in May, 1978.<sup>30</sup>

The bonded labourers, in almost all the cases will invariably be potential beneficiaries under the IRDP and other anti-poverty programmes. The TABLE - 3 shows the total subsidy available when the bonded labourers belongs to general category to the S.C., to the S.T. and also depending on whether he is a small farmer, marginal farmer, rural artisan or an agricultural labourer.

TABLE - 3

**THE ASSISTANCE AVAILABLE BY WAY  
OF SUBSIDY TO A BONDED LABOURER  
UNDER IRDP**

	<u>GENERAL</u>	<u>SCHEDULED CASTE</u>	<u>SCHEDULED TRIBE</u>
Small	Rs.6,250 under	Rs.6,250 under	Rs. 6,250 under
Farmer	Bonded Labour	Bonded Labour	Bonded Labour
	Scheme + 25% upto maximum of Rs.3,000 (Rs.4,000 in DPAP area).	Scheme + 50% upto maximum of Rs. 5000	Scheme + 50% upto maximum of Rs.5,000
Marginal	Rs.6,250 under	Rs.6,250 under	Rs.6,250 upto
Farmer	Bonded Labour	Bonded Labour	Bonded Labour
Rural	Scheme +33%	Scheme +50% up	Scheme +50% upto
Artisan/ Agriculture labourer	upto maximum of 3,000 (Rs.4,000 in DPAP areas)	to maximum of Rs.5,000	maximum of Rs. 5,000

Note: Percentage show subsidy with respect to total cost of the scheme.

DPAP: Drought Prone Area Programme

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However, the State Government can increase the total quantum of subsidy to the persons belonging to Scheduled Castes under Special Component Plan by way of providing infrastructural facilities, development of land and sinking of irrigation wells etc.

INVOLVEMENT OF VOLUNTARY AGENCIES IN IDENTIFICATION  
AND REHABILITATION OF BONDED LABOURER

The voluntary agencies and social action groups have a special responsibility in identification, release and thereafter rehabilitation of the bonded labourers. These agencies could be of assistance in identifying rehabilitation schemes which would be most appropriate for a particular area or a particular category of workers. This would ensure that there is no waste of money and that benefit does actually flow on a permanent basis to the freed labourers.

Voluntary Agencies, Social Action Groups etc. act as catalyst between people and authorities and play a very vital role in identification, release and rehabilitation, these groups can keep the law enforcing agencies on their toes through publicity, organised movements, complaints, public interest litigation etc. on various issues related to bonded labour and also can give protection, encouragement, support etc. to the bonded labour.<sup>31</sup>

In so far as rehabilitation is concerned, the Central State and District-level Government Organisations have pivotal role. But it is very unfortunate for all of us that these Governmental Organisation could not play the role for bonded labourers which they have to play. To instil enthusiasm in voluntary groups, it has been the consistent policy of the Government to involve those

Groups in the work of freeing bonded labour. The Labour Ministry in the form of guidelines with regard to public interest litigation has stated as under:<sup>32</sup>

"Of late, it has been observed that voluntary agencies and social action groups carry complaints in shape of public interest litigation to superior court who, in turn, entertain them as writ petitions and issue directions to the law enforcement machinery for providing relief to the aggrieved. In some ways this is a welcome trend. It should, however, be appreciated that approach to superior courts shows that the concerned law enforcement machinery does not discharge its functions adequately. This underscores the need for the law enforcement machinery at various levels to be more vigilant, sensitive and responsive to the complaints arising out of non-implementation of statutory provisions. They also need to be vigilant to carry out the direction of the superior court arising out of such public interest litigation and, in the process, providing timely relief to the aggrieved".

Further the guideline issued to field agencies with regard to news-paper reports, complaints of voluntary agencies etc. are:

- "(i) to give due cognizance to the news paper reports highlighting the existence and problems of bonded labourers and to have the complaints inquired into promptly and take appropriate action on the basis of the finding of enquiry;
- (ii) to give due weightage to the complaints made by the voluntary agencies and social-action groups regarding the existence and the problem of bonded labourers and provide relief to the aggrieved labours in accordance with the provisions of the bonded labour system (Abolition) Act 1976;



- (iii) to enlist the active co-operation and involvement of the voluntary agencies and social action groups in this programme and provide them necessary protection, encouragement and support; and
- (iv) to view public interest litigation in the correct perspective and impliment the direction of the Court in time, in right earnest and in letter and in spirit."

A number of voluntary action groups are actively engaged in work relating the bonded labour. The general experience is that the voluntary groups work independently of each other and there is no inter-action between them quite a part from duplications of some of their work, the lock of cordination results in failure to exchange information, if there could be coordinated dissemination of information, the work freeing and rehabilitation bonded labour could be greatly accelerated.

In a society like India , where glaring social and economic inequalities exist, there is need for social action groups to represent the under-privileged and the unreprensative. Fortunately, in India, there are a number of social action groups with a burning zeal to help their fellow being. It is only through social action groups working amongst the poor we shall be able to discover the existence of bonded labour and we shall be able to identifying and release them.<sup>33</sup>

SCHEME FOR INVOLVEMENT OF VOLUNTARY AGENCIES IN IDENTIFICATION AND REHABILITATION OF BONDED LABOURERS"

The new 20 points programme 1986 envisages involvement of voluntary Agencies in the task of identification, release and rehabilitation of bonded labourers. Accordingly, Ministry of labour launched a new scheme called involvement of voluntary Agencies in the identification and Rehabilitation of Bonded Labourers on 30th October, 1987. This scheme provides for selection of voluntary Agencies by Council for Advancement of People's Action and Rural Technology (CAPART) and by the State Government concerned. The expenditure incurred under the scheme is shared equally by the Central and the State Government concerned. The voluntary agencies selected either by CAPART or by the State Government would be paid managerial subsidy at the rate of Rs. 5,000 per annum. In addition to this, they will also be paid Rs. 100 for each bonded labourer identified by them in addition to 20 bonded labourers subject to the condition that the total amount being paid to the voluntary agencies in a year does not exceed Rs. 10,000. Details of this scheme given below:

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The Scheme for Involvement of Voluntary Agencies for Identification and Rehabilitation of Bonded Labourers-

(a) IDENTIFICATION/SELECTION OF VOLUNTARY AGENCIES:

The selection of voluntary agencies would be done either by the State Government or by the Council for Advancement of People's Action and Rural Technology

(CAPART). While doing so they may keep in mind the following factors which are only in the nature of guidelines:

1. The agency should be a legal entity. It should be based in a rural areas and be working for a minimum of three years.
2. It should have an objective to serve the social and economic needs of the community as a whole and mainly the weaker sections. It must work on 'no profit and no loss basis'.
3. Its activities should be open to all citizens of India irrespective of religion, caste, creed, sex or race.
4. It should have the necessary flexibility, professional skills to implement the programme.
5. Its office bearers would not be elected office bearers of any political party.
6. It should be committed to secular and democratic concepts and methods of functioning. It declares that it will adopt constitutional and non-violent means for rural development purposes.

(b) IDENTIFICATION OF BONDED LABOURERS BY THE IDENTIFIED/SELECTED VOLUNTARY AGENCIES:

1. Identified/Selected Voluntary agencies would be responsible for identification as well as rehabilitation of bonded labourers. However, an agency can take up only identification or rehabilitation of bonded labourers if it so desires.

2. Such voluntary agencies would submit lists of identified bonded labourers to competent authorities and pursue the matter till a decision is taken by the authority as to whether persons mentioned by them are bonded labourers or not, and release certificates are issued.
3. Agencies may also consider lodging a report with the police in terms of provisions of the Bonded Labour system (Abolition) Act, 1976 like any other individual.

(c) REHABILITATION OF BONDED LABOURERS BY VOLUNTARY AGENCIES:

The voluntary agencies identified/selected would submit projects for rehabilitation of bonded labourers to the District/Divisional/State level Screening Committee:

- (1) The Central and the State Government share of assistance (upto a maximum of Rs.6,250 per bonded labourer) would be placed at the disposal of voluntary agency by the State Government, or
- (2) The Central share may be paid to the voluntary by the Central Government through CAPART and CAPART or the voluntary agency may claim State share from the State Government . In case they are not able to get this share, the shortfall will be met by CAPART or the voluntary agency concerned. However, in no case should the assistance available for rehabilitation of a bonded labourer should be less than Rs.6,250 (exclusive of the amount/facilities in kind available under other government schemes).
- (3) The rehabilitation scheme would be integrated effectively with the other anti-poverty programmes and an integrated package approach would be adopted. The schemes/projects worked out by voluntary agencies would also conform to the guidelines/orders issued by Government from time to time.

(d) MONITORING OF THE IDENTIFICATION AND THE  
REHABILITATION PROGRAMME:

A review committee at the State level headed by the Chief Secretary or some other senior officer would be constituted to review the progress in identification and rehabilitation of bonded labourers by the voluntary agencies. At least two representatives of voluntary agencies would also be nominated on this committee. Voluntary agencies will be required to carry out the directions/instructions/ suggestions made by the review committee.

Voluntary Agencies would be reporting the progress in the matter of identification and Rehabilitation of bonded labourers to the District Authorities periodically. A copy of the progress report will also be sent to the Member Secretary of the Review Committee mentioned above. The Committee would meet at least once in a year.

CRITIQUES OF THE VARIOUS SCHEMES

- (i) There is lot of time lag between release of bonded labourer and their rehabilitation. Such delays lead to tremendous miseries on the released bonded labourer, tempting him to relapse into bondage. There are instances of released bonded labourers begging their ex-masters to take them back into bondage so as to get some economic security;

- (ii) The amount provided under the Centrally Sponsored Scheme for Rehabilitation is quite insufficient particularly because the CSS is not Integrated with other anti-poverty schemes;
- (iii) It is noticed almost everywhere that the CSS for Rehabilitation is not being Integrated with other welfare/anti-poverty schemes like Rural Housing Scheme, Adult, Education Scheme, IRDP and Employment Programmes;
- (iv) The land based schemes are generally found to be having tremendous potential for meaningful rehabilitation. However, most of the land based schemes have not succeeded on account of insufficient planning and lack of inputs and infrastructure;
- (v) The non-land based and skilled craft based rehabilitation schemes have also not been a success and consequently they have not provided sufficient economic returns to the beneficiary. The reasons by and large are as follows:
  - (a) The schemes were not identified with sufficient forethought and planning ;
  - (b) willingness and interest of beneficiary was not ascertained;
  - (c) Backward and forward linkages were not provided &
  - (d) The schemes were not integrated with the other schemes in the area.

(vi) The State Governments delay submitting Utilization Certificates to the Central Government. As a result release of grants is held up and the beneficiaries suffer;

(vii) In some cases the State Governments do not release their share of the CSS to the beneficiary making the rehabilitation highly insufficient;

(viii) In many of the rehabilitation schemes particularly the skill craft based units, the beneficiaries needed proper training very badly; Such training could be organised under programmes like TRYSEM, SCP and DIC schemes etc.

(ix) It is also noticed rampant corruption in implementation of the schemes and even in the identification of beneficiaries. Where cash is given for rehabilitation. Only meagre sum reaches the intended hands. Where land is given, the real users are not the released bonded labourers but either "ghosts" or the benami users. And where the assets are given poor quality assets even dead animals are given to the hapless bonded labourer;

(x) Insurance of the assets is also not done almost as a general practice. As a result of variety of factors described above, the assets are lost and in the absence of insurance, the loan component becomes a big burden for the poor fellow; and

(xi) The beneficiaries are not aware about the schemes being handed down to them. Such awareness would come by organising training programmes, awareness camps and mass publicity.

NOTES AND REFERENCES

1. See Utkal Contractors and Joinery Pvt.Ltd. v. State of Orissa (1987) 3 SCC 279 at P. 288
2. Bandhua Mukti Morcha v. Union of India,AIR 1984 S.C. 802
3. Neerja Chaudhry v. State of Madhya Pradesh,AIR 1984 S.C. 1099
4. R.S.D.Vol.C XXXVI,No.2 Col. 289 dated 19 November,1985
5. See the statement of Shri Sri Ballav Panigrahi,M.P., L.S.D.(English version ) Vol. XII No.24,December 20, 1985 Col. 357
6. Supra,Note 2
7. Ibid., at P. 806
8. Ibid.
9. Supra,Note 3 at PP 1103-4
10. AIR 1984,S.C. 1099
11. See Ibid., at P. 1102
12. See Ibid., at P. 1104
13. See Mukesh Advani v. State of Madhya Pradesh,AIR 1985 S.C.,1363,at P. 1364 (Facts in brief: The petitioner alleged that there was naked and unabashed exploitation of workmen in the stone quarries at Raisen, Madhya Pradesh. He also alleged that the workers are bonded labourers, and they belong to Tamil Nadu. By the time of enquiry by the Court these were no bonded labourers to be found there).



14. Bonded Labour System(Abolition) Act 1976, Sec.4(1)
15. Ibid. Ss.4 and 5
16. See the statement of Shri Sode Ramaiah, M.P. while discussing the Bonded labour System(Abolition) Bill 1985 L.S.D. (English Version) Vol.XII No.24,December 20, 1985.
17. D.O. Letter No. U/11016/13/82-B.L. dated 3rd Sept.1983
18. D.O. Letter No. Y-11011/4/84 B.L. dated 14 Feb.1986
19. D.O. Letter No. U-11016/20/82-B.L. dated 22nd June,1983
20. D.O. letter No. Y 11011/3/82-B.L.(11) dated 16th Aug.,1983
21. Supra,Note 14, Sec. 8
22. Ibid., Sec. 8(2).
23. Ibid., Sec. 9 (1)
24. Ibid., Sec. 11
25. Ibid., Sec. 10
26. Ibid., Sec. 12
27. See the statement of Shri Krishna Rao Narain Dhulap, M.P., while discussing the Bonded Labour System (Abolition) Act 1976 in the Rajya Sabha, R.S.D. Vol. XCIV, No. 6, 12th January 1976, para 138.
28. Ibid.
29. A centrally sponsored Scheme was launched by the Ministry of Labour in 1978-79 for rehabilitation of released bonded labourers.
30. Planning Commission, Evaluation of Centrally Sponsored Scheme for Rehabilitation of Bonded Labour ( Final Report), Programme Evaluation Organisation (PEO), Government of India, New Delhi, March 1984.

31. D.O. Letter No. M - 13011/42/84-B.L. dated 16th October, 1984.
  32. Extracts from D.O. Letter No. 13100/42/84-B.L., dated 16th October, 1984
  33. Neerja Chaudhry v. State of Uttar Pradesh, AIR, 1984 S.C. 1099, at 1104
  34. National Commission on Rural Labour- A Note on bonded Labour, March 1989.
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★                CHAPTER - V                ★  
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★                CONCEPTUAL UNDERSTANDING OF SOCIAL JUSTICE                ★  
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CONCEPTUAL UNDERSTANDING OF SOCIAL JUSTICE

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(i) EVALUATION, NEED AND MEANING-IN GENERAL:

The words social justice can be interpreted in many ways. Some mean distribution or redistribution of wealth; some interpret it as 'equality of opportunity'- a misleading term, since opportunity can never be equal among human beings who have unequal capacities to grasp it. But this conception can be removed if we follow the definition of justice given by Aristotle. He said that justice is thought to be equality, and so it is, but for equals not for every body, inequality is also thought to be just, and so it is, but for unequals, not for every body.<sup>1</sup>

As soon as the ideal of a welfare state is accepted by democracy it leads to one an important consequence and that is that the claim of social justice must be treated as paramount and primary and if the freedom of the individual and his individual rights need to be regulated in the order to achieve social justice, that regulation is a part of the price which democratic citizen must cheerfully pay in order to sustain the democratic way of life.

It may sound paradoxical, but it is never the less true that in the long run submission to the reasonable and necessary regulation of individual freedom and rights in their essential features. Social justice is not a blind concept or an irrational dogma. It seeks to do justice to all the citizens of the state democratic legislature regulation and prohibitions, in the same way as they must not show timidity in attacking the problem of inequality by refusing to pass the necessary and reasonable regulatory measures at all.<sup>2</sup>

This age old problem has been solved by the Indian thinkers in the past by adopting a doctrine Samanvay ( harmonious synthesis ). Social justice must be achieved by adopting necessary and reasonable measures with courage, wisdom foresight, sense of balance, and fairplay to all the interest concerned. That, shortly stated is the concept of social justice and its implications. If eternal vigilance is the price for national liberty, it is equally is price for sustaining individual freedom and liberty in a welfare state. Citizens jealous of their individual freedom and liberty must loyally cooperate with the democratic process which seeks to regulate that freedom and liberty in the interest of social good but they must steadfastly and resolutely resist in a democratic way the impositions of any fetters or restriction on individual liberty and freedom which are not

rationality and reasonable required in the interest of public good. It is in the decision of these eventually balanced and difficult disputes that the rules of law comes into operation and the judges have to play their role without fear or favour, uninfluenced by any consideration of dogma or isms.<sup>3</sup>

It is a fact that law social justice are closely related and both are complementary of each other and without it goal of welfare state can not be achieved. At the time of discussion about the social justice we can not ignore Roscoe Pound who has classified social interest under six heads, which the law should take into account in order to achieve the goal of social justice.

- (i) Social interest in General Security, e.g. Peace, Public, health, security of acquisition etc.
- (ii) Social interest in Security of Social Institutions e.g., marriage, religious institution etc.
- (iii) Social interest in General Morals e.g., gambling drinking, immoral traffic etc.
- (iv) Social interest in conservation of social resources, e.g., food, mineral etc.
- (v) Social interest in General Progress e.g. freedom of trade, encouragement of research.
- (vi) Social interest in Individual Rights e.g. wages, conditions of work, etc.<sup>4</sup>

In addition to these, Dean Roscoe Pound gave eight "jural postulates" - initially in 1919, he gave first five jural postulates to which he himself added three more in 1942 in order to ensure social justice. They are:

- (a) that no wanton aggression by other;
- (b) that parties will whom transaction are entered will act in good faith;
- (c) that there will be no hindrance in the enjoyment of his acquisitions and creations;
- (d) that the person will not be exposed to undue risk and that other will act with due care and cautions;
- (e) that dangerous things kept by other shall be cautiously and carefully kept within its bounds;
- (f) that employee has a right to employment;
- (g) that society will share the misfortunes which be fall on individual; and
- (h) that proper compensation worker, for necessary<sup>5</sup> human wear and tear in an industrialised society.

Even these postulates need addition due to changes or progress in society:

Social justice concerns the distribution of benefits and burdens throughout the society. Utilitarians propounds the theory of "greatest happiness to greatest numbers" as the key to the meaning of social

justice<sup>6</sup> H.L.A. Hart is of the view that the sphere of justice is not the same as that of sphere of equality.<sup>7</sup> In all the theories emphasis is an individual because a want though mental in its origin, has a material based in its satisfaction. To allow each the fullest opportunity to accumulate the means of production and control its distribution was one time believed to be the greatest good of greatest number. The old principle of the absolute freedom of contract and the doctrine of Laissez-faire have yielded place to new principle of social welfare and common good in whole of the eighteen and part of the nineteenth centuries. A Welfare State is rightly another name for a just state and a just state be best described as a just order of society.

In a Welfare State there are two social aspect of social justice. The first one is that every one has equal right to basic equality compatible with similar liberty of others; and the second one is that the social and economic inequalities are to be adjust in such a way that they are both reasonably expected to be every one's advantage and attached to position and offices open to all.<sup>8</sup> So social justice is designed to undo the injustice of unequal birth and opportunity to make it possible that wealth should be distributed as equally as possible and to provide that men shall have the material things of life in as equal measure as may be. Difference between



& man with exist and the equality which is the aim of social justice can not be a mathematical or a perfect equality, but what is aimed at is that at least a minimum of the material things of life should be guaranteed to each man; given such a start he may work out his life and his destiny as he might,<sup>9</sup> i.e., bread for all before jam for some.<sup>10</sup>

Today, the concept of social justice has gone beyond what the ancients could possibly have contemplated. It now takes the form of old age pensions, minimum wages, disability insurance, equitable distribution of land and scarce resources, equalization of employment opportunities and many other things.<sup>11</sup> the ramifications of social justice in developed and developing societies depend on their historical character, their social composition and the challenges in the economic and social development. The structure of any society is essentially human and therefore, the progress depends upon the ability of the society and the determination of men who steer the helm of affairs, to contribute to the development of men.<sup>12</sup>

Bhagwati, C.J. says "Social Justice is that justice which is not confined to a fortunate few, but takes within its compass large million of people who are living in a life of want and destitution which penetrates and destroys inequalities of race, sex, power, position of wealth and which brings about equitable distribution of the social,

material and political resources of the community.<sup>13</sup>

Thus social justice as the name indicate, must conform to justice in all its social aspect. Conceived, generally social justice includes economic and political justice.<sup>14</sup>

(ii) DEFINITION OF SOCIAL JUSTICE:

The word social justice is consist of two words one is social and other is justice. Social means relating of society. But about the justice it is difficult to give universally acceptable definition. Even though so many thinkers, jurists and sociologists tried to define this term as exact as possible. For example Aristotle said that justice was either distributive justice or corrective justice, the former required equal distribution among equal and latter applied wherein remedy was provided. Justice is the quality of being just and fair to all individual in the group. It seeks to give every one what is due to him. What is due can not be ascertained by absolute standards. The standard change depending upon time, place and circumstances. It does not only mean a just distribution of material goods of life, it deals with responsible requirement of body mind and spirit. It takes in both the means and the end, the process as well as the product, so that justice should be done through just means. It does not introduce class conflicts, but

seeks to improve the society, with a view to avoid, the imbalances. The readjustment of a social structure may involve transfer of resources from one sector to another, but the transfer is only an equitable reallocation of resources and not a destruction of structure itself. Justice may demand preferential treatment to weaker sections but that is only to correct the imbalances existing in society and not to cause unnecessary, harassment or injustice to the advance sectors thereof.

Anglo-Saxon as well as communist the aim of both the system is to achieve social justice, through the means adopted are vastly different in nature. Both the system regard the welfare of common man and promise social justice, though the term social justice remain undefined. The welfare of society requires that through individual right may be reasonably restricted, but there should be neither exploiters nor exploited in order to achieve social justice. The well being society depend on the co-ordination between individual rights and demands and needs of society.<sup>15</sup> Simply defined 'Social Justice' is a balance between social rights and social control.<sup>16</sup>

Social justice in a democracy may be defined as justice to all members of the society in all the facet of human activity-physical, intellectual and spiritual and in all fields of human endeavour-social, political and

economic. Now it has been accepted by all welfare states that social justice is one of the objective of democracy. The welfare of society requires that individual rights should be reasonably restricted in order to achieve social justice. The well being of society depend on the co-ordination and reconciliation between the individuals rights and demand and the need of the society. Thus Dr. Bukshish Singh rightly defined the word social justice in the following words.

"The balance between the individual right and social control ensuring the fulfilment of the legitimate expectation of the individuals under the existing laws and to assure him benefits the reunder and the protection in case of any violation or encroachment on his rights, consistent with the unity of nations and need of the society".

#### (iii) SOCIAL JUSTICE AND THE INDIAN CONSTITUTION:

At the time of Independence, India has the choice to adopt either communist form to abolish all form of capital and property and take over means of production and distribution and the Anglo-Saxon method of liberalism for the upliftment of common man's lot, the framers of the Constitution selected the latter method; so, we in India have the constitutional method which is legal and evolutionary to eradicate the social inequalities and exploitation. Its scope can be appreciated from a conspectus of the Constitution, its objects and the machinery

to achieve those objects.<sup>18</sup> Referring to the aspect of social justice, Subba Rao, C.J., (as he then was) observed: The Rule of Law under the Constitution has a glorious content. It embodies the modern concept of law evolved over the centuries..... It enjoins to bring about a social order in which justice, social, economic and political shall inform all the institution of national life. It directs it to work for an egalitarian society where there is no concentration of wealth, where there is plenty, where there is equal opportunity for all, to education, to work, to livelihood, and where there is social justice.<sup>19</sup>

Granville Austin thinks of Indian Constitution where he describes it as embodying the essence of social justice. He says, "The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goal of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievements."<sup>20</sup>

#### PREAMBLE OF THE CONSTITUTION:

The objective sought to be achieved by the Constitution of India echoes in its PREAMBLE which reads:

"We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, Democratic Republic and to secure to all its citizens:

Justice, Social, economic and political;  
Liberty of thought, expression, belief,  
faith and worship;

Equality of status and opportunity; and  
to promote among them all;

Fraternity assuring the dignity of the  
individuals..."

It clearly declare the ultimate source of the  
Constitution i.e., we the people of India, Prof. Wheare  
with his brevity observed:

"In India, the people enact the Constitution  
in our Constituent Assembly, but that  
Assembly was composed of representatives  
elected by a minority of the people of  
India and the Constitution itself was never  
submitted to the people of India and the  
Constitution itself was never submitted  
to the people directly. It is not unreal  
to speak of "the people" enacted a consti-  
tution "in" or "through", Constituent Assembly?  
It is seldom indeed that the people are  
asked to approve a Constitution ostensibly  
enacted in their names".<sup>21</sup>

If we leave the question of validity of the  
Constitution. But what does it mean- the five revolu-  
tionary words "We the people of India"? These words  
have negative and positive significance. The negative  
significance is "We the people of India" not we the  
"latifundists of India", we the people of India means  
not the tycoons and their lackeys. "We the people of  
India" positively and affirmatively means the millions  
upon millions who suffer ---- ." <sup>22</sup> "We the people of

India", it means, we, the poverty stricken people of India, we the poverty stricken millions of this country, the distitutes of this country.<sup>23</sup> We the people of India includes the millions of bonded labourers who are the forgotten specimens of humanity, thousands of contract labourers, the real makers of modern India throughly exploited by their fellows human beings; Constitution is made in the name of the millions and for the millions, but not for the millionaires.<sup>24</sup>

In A.K. Gopalan v. State of Madras, Patanjali Shastri, J. of the Supreme Court observed:

"There can be no doubt that the people of India have in exercise of their sovereign will as expressed in the Preamble, adopted the democratic ideal which assures to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality,"<sup>25</sup> that is how our national life is based on justice to all citizens, and the social, economic and political justice is its key-note.

However, dignity of the individual embodies in the preamble, is a myth to a bonded or contract labour. Remarking the Preamble, P.N. Bhagwati, C.J., (as he then was) observed the entire Constitution as "it is like a gun that does not fire".<sup>26</sup>

(iv) SOCIAL JUSTICE AND THE FUNDAMENTAL RIGHTS &  
DIRECTIVE PRINCIPLES OF STATE POLICY:

The Fundamental rights and the directive principles of state policy which are guaranteed and promised in part III and part IV of the Constitution, every article in these two parts is a stepping stone or reach the temple of social justice. The maker of the Constitution incorporated these with a view to ensure social justice, wherein the individual rights with reasonable restrictions imposed on Fundamental Rights of individual and Directive Principles in such a manner that the interest of State and individual be evenly balanced.

The Fundamental Rights seeks to ensure freedom or liberty of the individual against coercion or restriction by the state. The Directive Principles aimed at establishing a social order securing social justice for the Indian people. In fact, their roots lie deep in India's struggle for independence which aimed at not only bringing about a national revolution but also a social and economic revolution.<sup>27</sup> Granville Austin touching the aspect of social revolution which is needed to achieve social justice through the Constitution observed that, "the core of the commitment to the social revolution lies in Part III and Part IV, in the Fundamental Rights and Directive Principles of State Policy. These are the conscience of the Constitution."<sup>28</sup>



Hidayatullah J., (as he then was) in Golaknath v. State of Punjab, said emphatically that:

"The social document (constitution) is headed by a preamble which epitomizes the principle on which the Government is intended to function and these principles are later expanded into fundamental rights in Part III and the directive principle of policy in part IV. The former are protected but the latter are not. The former represents the limits of state action and latter are the obligations and the duties of the Government, as a good and social Government."<sup>29</sup>

The Constitution makers guaranteed the right to equality through Article 14 that "the state shall not deny to any person equality before the law and equal Protection of laws". And "our Constitution aimed at making India the land of opportunity; our politicians have converted it into a land of opportunism."<sup>30</sup> Untouchability is abolished<sup>31</sup>; Article 19 guaranteed six freedoms ( i.e., Right to: (i) Freedom of speech and expression, (ii) to assemble peacefully and without arms, (iii) Form associations or Unions, (iv) Move freely throughout the territory of India, (v ) to reside and settle in any part of India (vi) practice any profession or to carry on any occupation trade or business) to all citizens with reasonable restrictions and article 21 guarantees that no citizen shall be deprived of his life and liberty except according to procedure established by the law.

Under Article 23(1) , traffic in human beings and begar and other forms of forced labour are prohibited. Voilation of this provision is made punishable in accordance with law. Article 23(2) authorises the State to impose compulsory service for public purposes without making any discrimination on grounds only of religion, race, caste, or class of any of them. Thus, Article 23 incorporates what has been added to the American Consti-tution by the 13th Amendment, namely, "Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States or any place subject to their jurisdiction". Article 23 of our Constitution imposes a positive obligation on the State to protect the citizens rights from encroachment by the society.<sup>32</sup> Article 24 prohibits employment of children below age of 14 years in factories or mines or other hazardous employment.

Thus, Article 23 and 24 receives high mark towards pilgrimage to social justice with reference to bonded labourer, give the right against exploitation. The pillars of social justice - equality, liberty, and right against exploitation are guaranteed under Part III of the Constitution of India. Part IV of the Constitution contain a wide range of state activities embracing in their fold economic, social, political, educational, legal and international.

(v ) SOCIAL JUSTICE AND THE ROLE OF JUDICIARY:

The role function of the judiciary is to dispense justice according to law and to determine its goal as instrument of social justice. It is necessary to know the nature of judicial process and the inherent limitations and the powers of the court. Our system of justice mostly implies the adversary technique. The parties to the dispute are given an adequate opportunity to adduce evidence, to test evidence and to cross examine where witness are produced. It is the duty of judge to hear and record the evidence produced by the parties and the necessary sifting to apply the existing law and to arrive at conclusion. Naturally the judge is bound by materials on record and is to pronounce the judgment accordingly. To eliminate the judicial herass there exist a system of revision and appeal and Supreme Court placed at the apex. Thus the Courts have to function within the framework of the law on the basis of record and secondly they can take cognizance of the matters unless moved by a party. The judiciary plays a significant role in the adjustment of the claims and rival claims representing the interest of various components of contemporary society the constitution of India confers the necessary powers and lays down the necessary rules relating to functioning of the judiciary.

Judiciary placed very important role in the life of the people and commands respect and occupies a valued position in our democratic system. The observation of the Justice Subha Rao may be noted that under constitutional democracy it is the duty of Parliament as well as the executive to accept the decision of the Supreme Court, even if the decision is considered to be erroneous. That is why it becomes imperative to assess role of judges under Indian Constitution, the judge are bound to be faithful to the Constitution and to administer justice accordingly without fear or favour, the proper approach will be that judges should place a sympathetic and beneficial construction on legislative enactments as the object of every legislation is to advance the public welfare. Judges being a citizen can not help him aloof from the prevailing situation of the country.<sup>33</sup>

(vi) SOCIAL JUSTICE AND THE SUPREME COURT:

Judiciary has played and still playing a role to achieve concept of social justice. It is difficult to give precise and definite meaning of social justice. So that Supreme Court also faced difficulty to define the term social justice in exact form. This difficulty is mainly due to changing concept of social justice. Even then the Supreme Court in various cases made an

attempt to define the term social justice as exactly as possible.

In Muir Mills Ltd. v. Suti Mills Mazdoor Union,<sup>34</sup> Justice Bhagwati of the Supreme Court realised the difficulty of defining the phrase 'Social Justice' and refused to lay down any rigid definition when it said that, 'Social Justice' is a very vague and indeterminate expression and no clear cut definition can be laid down which will cover all situations ---- without embarking upon a discussion as to the exact connotation of expression 'Social Justice' we may only observe that the concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundation.

In State of Mysore v. Workers of Gold Mines,<sup>35</sup> the Supreme Court regarded the concept of social justice, as living concept of revolutionary impart, it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state.<sup>35</sup>

In J.K. Cotton Spinning & Weaving Mills Co.Ltd. v. L.A.F.,<sup>36</sup> Justice Gajendragadkar observed that the concept of social justice is not narrow , one sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep comprehensive. It is founded a basic ideal of socio -economic equality and its aim is to assist the removal of socio-economic disparities and

inequalities; nevertheless is dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to obstruct notions, but adopt a realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour and good relationship.

In Keshavanand a Bharti case,<sup>37</sup> Justice A.N. Ray pointed out that social justice will determine nature of individual right and also restriction on such rights. Social justice will require modification or restriction generally discloses that the principles of justice are placed above individual rights and whenever, or wherever it is considered necessary individual rights have been subordinated or cut down to give effect to principle of social justice. Social Justice means various concept which are evolved in the Directive Principles of State Policy.

In our Constitutional scheme, the Supreme Court has been assigned the role of ensuring and enforcing social justice as envisaged in the preamble. Fundamental Rights and Directive Principles of State Policy, along with the two other branches of the government the Executive and Judiciary. Thus, the judiciary was to be an arm of social revolution upholding the equality.

However, the Supreme Court regarded the concept of revolutionary import, it gives substance to the rule of law and meaning and significance to the ideal of welfare State . Thus the ideal task of administering social justice by balancing of individual right and the needs of society in imposing social control, falls on shoulders of judiciary in general and the Supreme Court in particular. Thus according to Supreme Court social justice is a means to determine nature and restriction of individual rights. It means that social justice is a balancing wheel of individual rights,

NOTES AND REFERENCES

1. Subba Rao: Social Justice and Law
2. P.B. Gajendragadkar; Law, Liberty and Social justice, P. 80, 1965 Ed.
3. Ibid., p. 81
4. Dr. Bakshish Singh, The Supreme Court of India as an instrument of social justice P.70, 1976 Ed.
5. Ibid.
6. Ibid. at P. 71
7. Ibid.
8. P. Jagannmohan Reddy, Social Justice and the Constitution, P. 2, 1976 Ed.
9. R.F. Rustumji, Law of Industrial Disputes in India, P. 57, 1964 Ed.
10. David Miller, Social Justice, P. 143, 1976 Ed.
11. Supra Note 8 at P. 8
12. Shri Jagan Nath Kaushal, "Social Justice and Its Challenge", C and MLJ, Vol. 20, No. 102 at P. 14
13. P.N. Bhagwati, C.J., Law as instrument of change, P.20 1985 Ed.
14. Dr. R.G. Chaturvedi, Natural and Social Justice, P.470 1975 Ed.
15. Supra, Note 4 at P. 73, 1976 Ed.
16. Supra, Note 14 at P. 476
17. Supra, Note 4
18. Supra, Note 14 at P. 25
19. Golak Nath v. State of Punjab, AIR 1967 S.C. 1643 at P. 1655



20. Granville Austin, The Indian Constitution: Cornerstone of a Nation, P. 50, 1972 Ed.
21. Wheare , Modern Constitutions, quoted by H.M. Seervai, Constitution Law of India, Vol.I, P. 141, 1983 Ed.
22. V.R. Krishna Iyer, " Our Founding Deed and our Fighting Creed - Some Thoughts on Their Future", C and MLJ, Vol. 20 and 102,P. 15 at P. 16
23. Ibid.
24. S.S. Prakash, Bonded Labour and Social Justice, PP. 36-37, 1990 Ed.
25. AIR 1950 S.C. 27 at P. 72
26. P.N. Bhagwati, "Age of activism"(Interview) India Today, August 15, 1985, P. 97
27. Supra, Note 8 at P. 10
28. Supra, Note 20
29. AIR 1967 S.C. 1643 at P. 1693-94
30. N.A. Palkhiwala, We the people , P. 55, 1984 Ed.
31. Article 17
32. K.P. Singh, Constitutional Law of India,P. 189, 1979 Ed.
33. See National Textile Workers Union v. Ram Krishna, AIR 1983, S.C. 75
34. AIR, 1955, S.C. 170 at P. 175
35. AIR, 1958, S.C. 920
36. (1963) II, LLJ, 436(S.C.)
37. Keshavananda Bharti v. State of Kerala, AIR 1973 S.C. 1401.

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CHAPTER - VI  
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PUBLIC INTEREST LITIGATION (PIL) OR  
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PUBLIC INTEREST LITIGATION (PIL) OR SOCIAL ACTION  
LITIGATION ( SAL ) - AS AN INSTRUMENT OF SOCIAL JUSTICE

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Unfortunately, Law in the old mould and justice in the court precincts, never could see the suppressed man and woman and child soaked in blood, toil, tears and sweat, because they were below the line of judicial vision.<sup>1</sup> Public Interest Litigation (PIL) or Social Action Litigation (SAL) is litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social collective, diffuse rights and interests.

Until the emergence of PIL, justice was a remote reality for our illeterate, under privileged and exploited masses. This has been largely due to three major difficulties: (1) lack of awareness of their legal rights; (2) lack of assertiveness due to a lowly socio-economic status; and (3) lack of a legal machinery to give them legal aid. Unless the poor become aware that the wrong done to them is a legal wrong and there is a legal remedy (available to them) they will not seek legal redressal. Then, even if they are aware of their legal rights, the poor do not have the means nor they will go in for

expensive litigation. And where a large number of people are victims of a common injustice or of common exploitation, it is not possible for each one of them to file a separate petition for the collective wrong. These are the major obstacles the poor face in the pursuit of justice.

Until the emergence of Public Interest Litigation justice through courts to enforce the Fundamental rights was limited to the rich and the politically powerful and had been beyond the reach of the socially and economically weaker sections of our country. Majority of our people being, poor, illiterate and exploited are unaware of laws and the rights available to them and as a result, are deprived of the civil and political, and the socio-economic rights that are guaranteed to them by our Constitution. High cost of litigation and the non-availability of locustandi ( i.e. the legal right of a person to file a suit or conduct a litigation in a court of law) had incapacitated the public spirited individual/individuals etc. to espouse the cause of these under-privileged sections in the court of law.

(1) LOCUS STANDI - MEANING & CONCEPT:

Locus standi means right of a person to seek judicial remedy, who has suffered or is going to suffer a legal injury because of violation of his legal right. These Latin words signify the legal right to file a suit or conduct litigation in the court of law. According to the traditional . Anglo-Saxon concept of locus standi, only the person wronged could sue for judicial redress. No one else could file a petition on his behalf. This doctrine was evolved in an era when the courts were mainly concerned with the rights of the individual. But we are in a new age of collective rights. The old doctrine of locus standi has been found to be inadequate to meet the needs of a developing society. Therefore it has been felt that the traditional interpretation of locus standi should be changed to bring justice within the reach of the poor masses. Accordingly, a new interpretation was given to this doctrine under which if the rights of an individual or a class of persons are violated and if by reasons of poverty or disability they can not approach the court themselves, any public spirited individual, or institution, acting in good faith, and not out of vengeance, can move the court for judicial redress. The narrow and limited doctrine of locus standi effectively blocked the poor from seeking justice because the poor are short of requisite awareness and

assertiveness to approach the court for judicial redress for the wrongs which were being perpetrated against them or for the rights which were flouted by the state legislative or executive action. But today the judiciary expounded the protective umbrella to cover the unprivileged masses by liberalisation the rule of locus standi through epistolary jurisdiction.

The reinterpretation of the concept of 'locus standi' by the Supreme Court has removed one of the major hurdles facing the poor and has paved the way for easy access to courts of justice. According to the traditional interpretation only a person who has suffered the legal wrong himself can have recourse to the court of law for relief. The new position is that if a legal wrong is done to a person or a class of persons who, by reasons of poverty or disability, cannot approach a court of law for justice, it is open to any public spirited individual or a social action group to file a petition on his or their behalf. This new approach give meaning to the constitutional objectives of socio-economic justice for all.

#### (11) HISTORICAL BACKGROUND OF LOCUS STANDI:

The leading case in which this Rule was first enunciated is Ex parte side botham (1880) 14 Ch.D., 458, where Lord Justice James defined a 'person aggrieved

to be a person who has suffered a legal grievance a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. This definition of locus was approved by Lord Esher M.R. In Re Reed Bowen and Co. (1887) 19 QBD 174. This narrow definition of locus made it difficult for the public interest litigation to sprout, with one honourable exception, i.e. Habeas Corpus. There, a person, other than the person incarcerated was allowed to bring a writ so that the incarcerated person's corpus or body could have been directed to be produced in the Court. But soon voices started being raised against this very restrictive concept of locus standi. Thinking people in USA, U.K., Australia and even here started questioning this myopic view of locus standi. In United States of America, the administrative agencies were considered to represent the public interest. The agency proceeding what they call, class action were to be the forums for vindicating public interest<sup>2</sup>. In England Lord Denning was the main exponent for liberalising the rules of locus standi. In his

dynamic judgments in McWhirter<sup>3</sup> and in the Black Burn cases<sup>4</sup> it was clearly established that any member of the public having 'sufficient' interest can maintain an action for enforcing or a public duty against a statutory or public authority. He said that it was a matter of high constitutional principle that the Court should assist to stop a Government Department or public authority. He said that it was a matter of high constitutional principle that the court should assist to stop a Government Department or public authority transgressing the law.

The House of Lords in Gouriet v. Union of Post Office Workers,<sup>5</sup> held that a member of the public lacks standing unless he shows some special injury or the invasion of a legal right. In the words of Lord Wilberforce, "It can be properly said to be fundamental principle of English law that private rights can be asserted by individuals, but that public rights can only be asserted by the Authority - General as representing the public". This decision clearly look the public law to the traditional private law strait jacket of standing being limited to invasion of legal right or specific injury. However, it was rectified by Order 53, Rule 3(9) of Supreme Court Act of 1981 (England ) which provides: "The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the



matter to which the application relates. The law as stands today is that under Order 53, a rate payer will now have standing to challenge legality of his legal authority's action without needing to enlist the aid of Attorney-General provided only that he can show a good cause.<sup>6</sup>

Under Article 226 of our Constitution a petitioner could attack an administrative action where he was prejudicially affected by the act or omission even though he had no proprietary or even fiduciary interest in the subject matter thereof.<sup>7</sup> Thus in N.V. Subba Rao v. Government of Andhra Pradesh,<sup>8</sup> the petitioner could challenge the opening of a bone factory on the ground that it prejudiced the interests of residents of the locality. In Varadarajan v. Salem Municipality<sup>9</sup> the municipality by an illegal resolution permitted the erection of a statue in violation of the Municipal Act and undertook to maintain it from municipal fund, it was held that a tax payer had a locus standi to file a writ petition for quashing such resolution.

(iii) PUBLIC INTEREST LITIGATION (PIL) OR  
SOCIAL ACTION LITIGATION (SAL) :

Nature and Need: Public Interest litigation or social Action Litigation is, in the nature of collective litigation, dealing essentially in the enforcement of rights of a large number of disadvantaged and exploited persons

in an area where it is the responsibility of the State to end such exploitation. PIL or SAL is a co-operative effort on the part of the petitioner, the State and the Courts to secure economic, social and Cultural Justice to the poor and the dis-advantaged.

PIL or SAL is a new type of litigation is a new type of litigation initiated by the Supreme Court of India to enable the poor and the vulnerable sections of society to approach the High Courts and Supreme Court to get their Fundamental Rights enforced. Justice P.N. Bhagwati has been instrumental in popularising and promoting this type of litigation in India. At present PIL or SAL petitions can be filed in Supreme Court under Article 32 or in High Courts under Article 226 of the Constitution by public spirited person, social workers, voluntary organisations, lawyers and journalists on behalf of the poor, exploited and weaker sections of society. This is possible because of the new scope given by the Supreme Court to the concept of locus standi.

The poor and the illiterate are not able to understand their legal problems and do not have legal access to justice through the traditional type of litigation because of its high cost, complicated and slow procedures. The Court felt that the protection of law has so far been available only to the rich and the politically powerful. The civil and political rights of the poor people exists only on paper and not in

reality. The time has come for the courts of the to become the courts also of the poor and oppressed Indians. The judicial system must become an effective instrument of social justice.

(iv) HISTORY OF PIL (SAL) IN INDIA:

The precise date when PIL or SAL was initiated cannot be pinpointed. However, the turning point was sometime in 1978 when the Supreme Court took cognisance of the letters written by Charles Sobhraj and Sunil Batra from their prison complaining about the torture to which they and their fellow prisoners were subjected (AIR 1980 ,P.1579). The Court treated the letter as writ petitions and proceeded to enquire into the conditions of the prisoners and adjudicate accordingly. The Court then started taking notice of articles published in newspapers drawing attention to the plight of under-trials languishing in prisons for years together. Ms Kapila Hingorani (Advocate) filed a writ on behalf of 29,000 Bihar under-trials. The PIL or SAL helped the court to release many undertrial prisoners through its interim orders. Since then, the range of PIL or SAL has spread from release of bonded labourers, to child labour, to Nari Niketan, to street hawkers, to environmental issues. It may be pointed out that it was Justice Bhagwati and Justice V.R. Krishna Iyer who mainly created a climate for PIL or SAL. In a memorable

Judgment. Jolly v. Bank of Cochin,<sup>10</sup> Justice Krishna Iyer stated that it would be unjust to send a person to jail when he is unable to pay his debt due to extreme poverty and illness in the family.

This new development of Public Interest (Litigation or Social Action Litigation has even created a rift amongst setting Judge in the Supreme Court. Protagonists of one view regard that the function of the Courts is to apply the law as it is and only in matters before it whereas the other view is that the Courts should take on the role of an activist and work positively to achieve the social aspiration. This will mean that the Judges should conform to the social philosophy of the State. Between these extreme ends, the judicial system has to strike a golden mean i.e. the law should be interpreted with a view to do justice social and economic but without transgressing the written law (M.C. Chagla, Retired C.J., in the Individual and the State, PP.17-18). The judiciary should on one hand prevent any encroachment on its jurisdiction but at the same time it has to avoid any encroachment on the jurisdictions of the other functionaries and refrain from the temptation of trying to become of omni-potent and to curb its zeal to become all pervasive creesader and reformist. The law is necessary evil from which there is no escape, although anarchists regard it as a 'MASK' to perpetuate the dominance of the weak by strong or the denouncement

by communists as law being 'BOUGEOIS' INSTRUMENT FOR domination of the pro proletariat yet no substitute of law could be found. Paton ( in Jurisprudence P. 39) has sharply commented that even if no one covets his neighbour's possessions, he may still covet his neighbours possessions, he may still covet his neighbour's wife, law may change its functions in Socialist State, but no community can exist without it.

(v) LOCUS STANDI AND PIL (SAL) - THE ROLE OF SUPREME COURT:

Now State is a positive State which can be best suited to promote positive good. By this the State assumes the manifold activities and further Part IV of our Constitution empowers the State to interfere in all spheres of life ( to attain distributive justice). Among them are freedom, indigency, ignorance and discrimination as well right to healthy environment to social security and to protection from financial commercial or even Government oppression.<sup>11</sup> Greater conferment of these social, economic rights and imposition of public duties on the state and other authorities for taking positive action results in situations in which single human action may be beneficial, or prejudicial to a larger number of people making the traditional scheme of litigation as a mere two-party affair entirely inadequate, for e.g. the discharge of affluent in a lake or river or omission of noxious gas, or defective or un-

healthy packaging of consumer goods etc. may all result in injury to public at large wherein it would not be possible to say that any specific legal injury is caused to an individual or to a determinate class of individuals.<sup>12</sup> It is a case of public injury and one of the characteristics of public injury is that the act or acts complained of cannot necessarily be shown to affect the rights of determinate or identifiable class or group of persons. Public injury is an injury to an indeterminate class of persons.<sup>13</sup> In such cases the duty is one which is not correlative to any individual rights. Now if the breach of public duty were allowed to go undressed because there is no one who has received a specific legal injury or who is entitled to participate in the proceedings pertaining to the decision relating to ... promote such public duty, the failure to perform such public duty would disrespect for Rule of Law.<sup>14</sup>

It is not that some of our Judges are unaware of the problem that our poor citizens face in country. Krishna Iyer J., ( as he then was) in Municipal Council, Ratlam v. Shri Vardhi Chand and others<sup>15</sup> and in Fertilizer Corporation v. Union of India,<sup>16</sup> has this to say about our judicial system:

"Admirable though it may be, it is at once slow and costly. It is finished product of great beauty, but entails an immense sacrifice of time, money and talent. This 'beautiful' system is frequently a luxury; it tends to give a high quality of justice only when for one reason or another, parties can surmount the substantial barriers which it erects to many people and most types of claims".

The Supreme Court in Fertilizer Corporation v. Union of India quoted with approval this part of the Article captioned: "Easier access to Court of Law" in Australian of 16th November, 1977: "Perhaps—and it is only perhaps, there was some justification for restricting access to the Courts to prevent their being begged down in a morass of ineffectuality. But today's better informed, better educated more literate and more politically aware citizens should certainly not be barred from the courts by tradition. The Law can no longer be a closed shop. Keeping in view, the massive exploitation of the masses by powers that be and the total helplessness of the citizens, germane for violent revolution our Supreme Court observed in the afore-mentioned case:

"We have no doubt that in a competition between courts and streets as dispensers of justice, the rule of law must win the aggrieved person for the law court and wean him from the lawless street. The simple terms, locus standi must be liberalised to meet the challenges of the times. Ubi just ibi Remedium must be enlarged to embrace all interests of public minded citizens or organizations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets."

About the formalities that are required to be followed in the institution of any Court proceeding, the Supreme Court had this to say in S.P. Gupta and others v. Union of India and others.<sup>17</sup>

"It is true that there are rules made by this Court prescribing the procedure for moving this court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a hand maiden of justice and the cause of justice can never be allowed to be theorated by any procedural technicalities. The Court would, therefore=, unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as Writ Petition and act upon it".

In Maharaj Singh v. State of Uttar Pradesh,<sup>18</sup> the Supreme Court observed that, "where a wrong against community interest is done. 'no locus standi' will not always be a plea to non-suit an interested public body chasing the wrongdoer in the Court locus standi has a larger ambit in current legal semantics than the accepted individualistic, jurisprudence of old<sup>19</sup>. The Supreme Court liberalised its procedural formalities relating to



locus standi by giving an opportunity to social action groups to awaken the Court on behalf of the poor. The Court observed that where there is a denial of the Constitutional or legal rights of the poor who on account of their poverty or disability or socially or economically disadvantaged position are not able to approach the Court for vindicating their rights, any member of the public or social action group acting on behalf of the poor can approach the court and this need not be done by filing a regular writ petition through a lawyer but it would be enough by addressing a letter to the Court.

In Munna v. State of Uttar Pradesh<sup>20</sup> where a Writ petition was filed in the Supreme Court by a social worker, relief was sought in respect of certain juvenile under-trial prisoners. The petition was based on serious allegations made in a newspaper about the maltreatment of accused children lodged in Kanpur Central Jail. The Supreme Court gave certain directions in the matter. In another case Kadra Pahadia and others(1) v. State of Bihar<sup>21</sup>, where the problems of four under-trial languishing for about 8 years was conveyed to Supreme Court by a letter addressed by a social scientist, the court directed the sessions judge to take and dispose of the case immediately. Letters were also being treated as writ petition in a few cases. In Upendra Baxi v. State of Uttar Pradesh<sup>22</sup> the Supreme Court

permitted the petitioner, a law Professor, to raise infringement of Article 21 on behalf of the inmates of Agra Protective Home who were living in degrading and pitiable conditions.

The cases of undertrial prisoners,<sup>23</sup> prison inmates suffering from police torture,<sup>24</sup> or custodial violence to woman prisoners<sup>25</sup> have approached the portals of the Court for judicial redress., In Sunil Batra v. Delhi Administration(1)<sup>26</sup> a letter written by a co-prisoner was treated by the Supreme Court as a writ petition to correct the illegalities committed by prison authorities on the prisoner. Here Justice Krishna Iyer's observation in one of the Hussainara Knatoon series needs attention, i.e. whenever fundamental rights are flouted or legislative protection ignored to any prisoner's prejudice the Supreme Court's writ will run breaking through stone walls and iron bars to right to wrong and restore the rule of law.<sup>27</sup>

In People's Union for Democratic Rights v. Union of India,<sup>28</sup> certain labour laws violations were brought to the notice of the Supreme Court, by the petitioner through a letter. In this case petitioner is an organisation formed for the purpose of protecting democratic rights, by means of a letter. The letter was based on a report made by a team of three social scientists who were commissioned by the petitioner for the purpose of

investigating and inquiring into the conditions under which the workmen engaged in the various Asiad Projects. The preliminary objection raised by the respondent that the petitioner had no locus standi to maintain the writ petition; because he was not the aggrieved party was repelled by the court by observing that:

"We wish to point out with all the emphasis at our command that public interest litigation, which is strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversely character where there is dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal right of large number of people who are poor, ignorant or in socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government. The rule of law does not mean that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law meant for them also, though today it exists only on paper and not in reality. If the Sugarbarons and the alcohol kings have the fundamental rights to carry on

business and fatten their purses by exploiting the consuming public, have Chamars belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil?

Civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty; utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce?"<sup>29</sup>

The above sentiment expressed by two Judges of Supreme Court, unfortunately, are not shared by all of them.

For status queists of locus standi who argued that these cases will add to backlog of the Court," the Court sharply as answered that, "No State has right to tell its citizens that because a large number of cases of the rich are pending in our courts, we will not help the poor to come to the court for seeking justice until the staggering load of cases of people who can afford disposed of."<sup>30</sup>

It was held in *Asiad* case that duty was cast on the State, to see no person violates the Fundamental Rights guaranteed to citizens. Further, the Court

added that since the person whose Fundamental Right was flouted, was unable to wage a legal battle against strong and powerful opponent, it is the State's obligation to protect that individual Fundamental Rights.

In November, 1982, Mr. Sudeep Majumdar, a newspaper man invited the attention of the Supreme Court, by a letter, to the injuries and accidental killings of tribals in the largest ammunition testing range of army near Itarsi in Madhya Pradesh, people were dying in large numbers, while collecting scrap from the exploiting shells. This was a typical situation where the Court should have been only eager to interfere.<sup>31</sup> The Court without giving a hearing to the petitioner or his lawyer present in the Court, choose to refer the same to a Constitutional Bench with the many questions. The important questions arise for consideration in this case, we feel that this case should be placed at this stage itself before the Constitutional Bench to give proper guidelines on the various issues involved in it? Even after the reference the Supreme Court has directed the State Government to take notice of the maiming of the children and give them medical relief, as an interim measure.

The case of Sheela Barse v. State of Maharashtra<sup>32</sup>  
In 1983, Sheela Barse, a well known journalist, addressed a letter to the Supreme Court complaining

custodial violence committed against women under trials while they were confined in police lock-ups in the city of Bombay. The court appointed Ms. Armaity Desai, then Director of Nirmala Niketan College of Social Work, to investigate. On the basis of Ms. Desai's report, the Supreme Court bench consisting of Justices Bhagwati, R.S. Pathak and A.N. Sen issued directions to the State of Maharashtra to take steps to protect the prisoners of

The case of Sanjit Roy v. State of Rajasthan:<sup>33</sup>

The Public Works Department of the State of Rajasthan was constructing the Madanganj-Harmara road close to village Tilonia as part of famine relief work. A large number of workers, employed on daily wages were required to put in a fixed amount of work, failing which their wage, fixed at Rs. 7 per day was proportionately reduced. The petitioner filed a public interest litigation under Art. 32 before the Supreme Court, challenging the non-payment of minimum wages to famine relief workers. The petitioner contended that due to the wage policy followed by the PWD, workmen were being paid much less than the minimum wage of Rs. 7 per day. The Rajasthan Government (respondent) contended that since the construction work of Madanganj-Harmara road was a famine relief work, the Minimum Wage Act, 1948 was not applicable by reason of

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Rajasthan Famine Relief Workers Employees (Exemption from labour laws) Act, 1964, The petitioner challenged the validity of the Exemption Act. The Court, relying on the Asiad case judgment, held that if anything less than minimum wages is being paid to any worker, it is a violation of his fundamental right under Article 23. The Court also held that minimum wage is not fixed on piece rate basis and so a stipulation that a particular minimum wage payable would be proportionately reduced if the worker turns out less work, cannot be sustained. In such a case, the employer may take disciplinary action against him but he cannot pay him anything less than the minimum wage. The Exemption Act, in so far as it excludes the applicability of the Minimum Wages Act 1948, was held constitutionally invalid.

The case of M.C. Mehta v. Union of India,<sup>34</sup> popularly known as The Ganga case - Public Interest Litigation has been started by Mr. M.C. Mehta, a supreme court lawyer to ensure a pollution free Ganga. The river water is being contaminated to a dangerous level by industrial effluents and domestic sewage. In a historic judgment on September 27, 1987, the Supreme Court ordered the closure of a number of tanneries near Kanpur which were found guilty of discharging, directly or indirectly, toxic effluents into the river. The court held that tanneries which claimed that they had no



money to establish primary treatment plants cannot be allowed to exist just as an industry must close down if it cannot pay minimum wages to its workers. The Ganga pollution writ petition filed in 1985 had only eight respondents, but they have since increased to 430. They comprise 98 municipal authorities, industrial units and others, situated on the banks of the river from Rishikesh to Hoogly.

Besides above mentioned cases there are number of cases has been reported to the Supreme Court through PIL (e.g., Bonded Labour cases, Environmental cases, Banned harmful drugs, Illegal detention and many others based on social problem) in which Supreme Court took positive views.

The provisions of Articles 32 and 226 confer a good deal of discretion on the Courts. There are clear indicatives in recent judicial pronouncements that courts are taking a very relaxed view of locus standi so much as so that there are now definite signs that the concept of 'Public interest litigation' is in the process of evolution.<sup>35</sup>

In Janta Dal v. H.S. Chowdhry,<sup>36</sup> Justice S. Ratnavel Pandian of the Supreme Court took very serious view on locus standi in PIL and observed:

"Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid about express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detainees expecting their release from the detention orders etc. etc., are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed the busy bodies, meddlesome intelopers, wayfarers or officious interveness having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system".

(vi) PIL (SAL) AND THE BONDED LABOUR:

So for the cases on bonded labour that came before the Court are only through social action litigation. It was only through social action litigation that the plight of bonded labour has attracted the attention of judiciary. Public Interest Litigation (SAL) is not in the nature of adversary litigation but it is a challenge and opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution.<sup>37</sup>

In the recent past, several cases for the relief and rehabilitation of bonded labourers have been filed in the Supreme Court through PIL (SAL), few of them with the brief facts and decision are as under:

Bandhua Mukti Morcha v. Union of India:<sup>38</sup> In this case forty of the bonded labourers working in Pichola in Bhiwani district described in a letter to the Supreme Court the miserable condition in which they were living. They wrote, :

"We are all Adivasi Bhils; with great difficulty we are given wages from Rs. 3 to 5 a day which is just enough for our food rations. Drinking water is supplied once in three or four days. Our huts are worse than those used for keeping animals. We want to go away from here now itself but our Master and his goondas tell us that we

cannot leave unless we pay back their loan which is Rs. 2,000 to Rs. 8,000 per family. Our master enters our huts and molests our young daughters and also beats them up. please save us".

Swami Agnivesh, Chairman of the Bandhua Mukti Morcha forwarded this letter to the Supreme Court. A division bench headed by Justice P.N. Bhagwati appointed two Commissioners - Mr. Jose Verghese, Advocate Supreme Court and a journalist - to enquire into the conditions of these labourers and report to the Court. The expenses of the Commissioners were met by the Committee for Implementing Legal Aid Schemes. Though the interim orders of the courts several groups of bonded labourers were released from the contractors.

In another case Bandhua Mukti Morcha v. Union of India,<sup>39</sup> a letter addressed to Justice Bhagwati relating the deplorable conditions of bonded labourers working at two stone quarries at Faridabad was admitted as a writ petition. The Court appointed two advocates and Dr. Patwardhan of ITI to carry out a socio-legal investigation in the matter. On the basis of their report, the Supreme Court while freeing the bonded labourers upheld the claim of the petitioners that stone quarries may come under the definition of 'mines' under the Mines Act and that all workers should be entitled to all benefits accruing thereunder and under various other beneficial legislations.

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In case of Neerja Chaudhry v. State of M.P.<sup>40</sup>, a writ petition was filed by a journalist in the form of a letter to the Supreme Court complaining that about 135 bonded labourers within the meaning of Bonded Labour System (Abolition) Act 1976, working in the stone quarries of Faridabad had been released by the Supreme Court's order and had been brought back to M.P. with a promise of rehabilitation by the Chief Minister, but had not been rehabilitated even after six months of their release and were living in conditions of dire poverty. Giving suitable directions to the State of M.P. for proper implementation of the Bonded Labour Act, the Supreme Court observed, " It is the plainest requirement of Article 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated .... Freedom from bondage without effective rehabilitation.... would frustrate the entire purpose of the Act for, in that event, the freed labourers will slide back into bondage again to keep body and soul together."

Bandhua Mukti Morcha<sup>41</sup> provided jurisprudential foundation to the doctrine of social action litigation. The language of Articles 32 and 226 of the Constitution does not say that the person whose Fundamental Right is infringed or whose legal right is infringed alone should be entitled to approach the Court.<sup>42</sup> In Bandhua Mukti

Morcha<sup>43</sup> giving a new dimension to the term "appropriate proceedings" envisaged in Article 32(1)<sup>44</sup> of the Constitution the Court speaking through P.N. Bhagwati, J., stated that, "There is no limitation in regard to the kind of proceeding envisaged in Clause(1) of Article 32 except that the proceedings must be "appropriate" and this requirement of appropriateness must be judged in the light of the purpose for which the proceeding is to be taken, namely, enforcement of a Fundamental Right."<sup>45</sup> He went on saying that, "The Constitution makers deliberately did not make any particular form of proceeding for enforcement of a Fundamental Right nor did they stipulate such proceeding should conform to any rigid pattern or strait jacket formula .... because they knew that in "country like India where there is so much of poverty, ignorance, illiteracy, deprivation and exploitation, any insistence on rigid formula of proceeding for enforcement of a Fundamental Right would become self defeating....."<sup>46</sup>

Supreme Court reiterating its stand in the Judges Appointment and Transfer case,<sup>47</sup> observed in Bandhua Mukti Morcha<sup>48</sup> that where a member of the public action in bonafide moves the court for enforcement of Fundamental Rights on behalf of person or class of persons who on account of poverty or disability or socially or economically disadvantaged position can not approach the Court for relief, such member of the public may move the Court

even by just writing a letter, because it would not be right or fair to expect a person acting pro bono publico to incur expenses from his own pocket for going to a lawyer and preparing a regular writ petition. On the other hand, it is goofy to expect a regular writ petition from a bonded labourer for enforcement of his Fundamental Rights because they are in such a disadvantaged position in the society to have legal access due to lack of awareness and assertiveness and they are suffering from grinding poverty. At last the blindfold of the Goddess of Justice was removed through social action litigation and now she is able to perceive how unequal are the contenders before her observed through Bhagwati, J., observed that the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress, but would have power to issue any direction, order or writ including writ in the nature of any high prerogative writ.<sup>50</sup>

The cases of Neeraja Chaudhry<sup>51</sup> and Mukesh Advani<sup>52</sup> followed the footsteps of Bandhua Mukti Morcha. In all the cases Commissions were appointed as fact-finding bodies and the Court issued guidelines to the concerned Governments for the identification, release and rehabilitation of bonded labourers. The following are the gains of social action litigation towards bonded labour:<sup>53</sup>



1. Socially conscious individuals and social action groups can and will come forward on behalf of the voiceless and invisible bonded labourers because of liberalised rule of locus standi.
2. Simplification of procedure makes it possible for social action groups or individuals to approach the courts through writing letters to the court which can be treated as writ petitions.
3. The appointing of Commissions by the Court with the members of social action groups as fact-finding bodies will establish a new mode of establishing facts before the Court.
4. The monitoring practice of the Court for the implementation of its directions at periodic intervals, to ensure compliance, enable the effective vindication of rights in practice.

1. V.R. Krishna Iyer, J., Judicial Justice (A New Focus towards Social Justice ), P. 8, 1985 Ed.
2. K., Surendra Mohan, "Public Interest Litigation and Locus Standi", C.U.L.R. (1984) , P. 523 at P. 524.
3. A.G.Y., Enset, McWhirter v, Idependent Broadcasting Authority (1973), 1 All. E.R. P. 184
4. R.V. Greater London Council, Exparte Blackburn (1976), 3 All. E.R.P., 184; R.V. Metropolitan Police Commissioner, Exparate Blackburn and other (1973). All, E.R., P. 324 and R.V. Metropolitan Police Commissioner, Exparte Blackburn (1968), 1 All. E.R.; P. 763.
5. (1978) A.C. 435, where a member of the public, whom the Attorney General had refused to assist, failed in claim for a declaration that the calling of a strike by Post Office workers would be a criminal offence as provided in the Post Office Act, 1953.
6. See Barrs v. Bethell (1981) , 3 W.L.R., P. 874
7. See G. Venkateswara Rao v. Government of Andhra Pradesh, 1966(2) SCR P.172
8. AIR 1967, A.P. P. 98
9. AIR, 1973, Mad. P. 55
10. AIR 1980 S.C. 470
11. S.P. Gupta & Others v. Union of India, AIR 1982, S.C. 149, at p. 191.

12. Ibid.,
13. Ibid.
14. Ibid.
15. AIR 1980 S.C. 1622
16. Fertilizer Corporation Kamgar Union v. Union of India (1981) 1 SCC 568; AIR 1981 S.C. 344
17. AIR 1982, S.C. 189
18. AIR 1976 S.C., P. 2602
19. AIR 1976 S.C. P. 2602 at P. 2609
20. AIR 1982 S.C., P. 806
21. AIR 1981 S.C. ,P. 939
22. (1981) 3 Scale 1137
23. Hussainara Khatoon v. State of Bihar, AIR 1979, S.C. 1360, 1377, 1809, Kadra Pahadia v. State of Bihar, AIR 1981 S.C. 939 and Khatri v. State of Bihar, AIR 1981, S.C. 928
24. Sunil Batra v. Union of India, AIR 1980 S.C. 1579; Munna v. State of U.P., AIR 1982 S.C. 806
25. Upendra Baxi v. State of U.P. (1981) 3 Scale 1137, Sheela Barsa v. State of Maharashtra, AIR 1983 S.C. 378
26. AIR 1980 S.C. P. 1579
27. AIR 1978 S.C. PP. 1515-1516
28. AIR 1982, S.C. 1473
29. AIR 1982 S.C., P. 1473 at P. 1477
30. Ibid., at P. 1478
31. K. Surendra Mohan, "Public Interest Litigation and Locus Standi" (1984) CULR, PP. 530-31.

32. AIR 1983, S.C. 378
33. AIR 1983 S.C., P. 328
34. (1987) 1 S.C.C., 395
35. M.P. Jain, The Evolving Indian Administrative Law, P. 203, 1983 Ed.
36. Janta Dal v. H.S. Chowdhry, (1992) 4 S.C.C. 305, P. 110
37. Bhandhua Mukti Morcha v. Union of India, AIR 1984 S.C., 802, P. 811
38. Bandhua Mukti Morcha v. Union of India
39. AIR (1984) 3 S.C.C. P. 161
40. (1984) 3 S.C.C. P. 243
41. AIR 1984, S.C., P. 802
42. Bhagwati, J., in an interview to "The Lawyers Collection", Aug., 1986, Vol.1 No.8 at PP.89
43. AIR 1984 S.C., P. 802
44. Article 32(1): The right to move the Supreme Court by appropriate proceedings for enforcement of the rights conferred by this part is guaranteed .
45. AIR 1984, S.C. P. 802, at PP. 813-14
46. Bhandhua Mukti Morcha v. Union of India, AIR 1984 S.C. P. 802, at P. 814
47. S.P. Gupta and others v. Union of India, AIR 1982, SC, P. 149
48. AIR, 1984 S.C., P. 802
49. Ibid., at at P. 814
50. AIR 1984 S.C.P. 802 at P. 814
51. AIR 1984 S.C., P. 1099
52. AIR 1985 S.C., P. 1363
53. S.S. Prakash, Bonded Labour & Social Justice, P. 112 1990 Ed.

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CHAPTER - VII

JUDICIAL ACTIVISM AND THE BONDED LABOUR

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JUDICIAL ACTIVISM AND THE  
BONDED LABOUR SYSTEM

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(i) COURT- THE DEFENDER AND PROTECTOR OF BONDED LABOURERS:

The role of Supreme Court in protecting poor and the weakest of the weak; bonded labourers is very appreciating. The Supreme Court as protected the bonded labourers in various ways, the most important of them are (i) has removed the obstacle of locus standi for the path of bonded labourers. (ii) It has deviated from the old and stereotyped procedure to help bonded labourers and (iii) It has construed the various Article of the Constitution and the labour welfare statutes in the liberal way to help the bonded labourers.

In the recent past it has become possible to represent the poor because of the new scope given by the Supreme Court to the concept of the locus standi in the case of S.P. Gupta v. Union of India.<sup>1</sup> (Judges Appointment and Transfer case) and it was further confirmed in the cases of F.U.D.R. v. Union of India<sup>2</sup> (Asiad Workers case) and Bandhua Mukti Morcha v. Union of India.<sup>3</sup> According to the traditional Anglo-Saxon concept of locus standi,

only the person wronged or aggrieved could sue for judicial redress. If this concept is continued in the given socio-economic conditions of our country it would result in closing the doors of justice to the poor and deprived sections of society and the supreme court, therefore, added a new dimension to the doctrine of locus standi. According to the new interpretation, if the legal rights of an individual or a class of persons are violated and if by reason of poverty or disability they can not approach the court for judicial redress. Any public spirited person or institution etc. acting in good faith/bonafide, and not out of vengeance can move the Court for judicial redress.

In the Supreme Court, a number of cases have come under Public Interest Litigation since late seventies under Article 32 of the Constitution for the enforcement of the fundamental rights. They have come in the form of letters, investigations reports/newspaper clipping accompanied by letters, complaints and writ petitions. The court in cases of public importance, invariable has treated these letters and complaints, as writ petition. However in certain cases the court has requested or rather insisted the petitioner to file a formal writ to follow the usual procedural norms. The Court also has appointed advocates to represent the petition at the expense of the State wherever the petition was not represented therefore.

Supreme Court has deviated from the code of Civil Procedure, Evident Act and Supreme Court Rules, for the enforcement of fundamental rights of bonded labourers. The example can be found in Bandhua Mukti Morcha case<sup>4</sup> where Supreme Court appointed two social workers ( M/s Ashok Srivastava and Ashok Panda as Commissioners to visit the stone quarries of Faridabad District where bonded labourers were working, who reported 250 bonded labourers. On their report the Supreme Court directed the State Government to release and rehabilitate the bonded labourers. The appointment of these social workers as Commissioners was challenged by Additional Solicitor- General of the State Government as violative of Order XXVI of Code of Civil Procedure and order XLVI of the Supreme Court Rules 1966 contending that a Commission can be appointed by the Supreme Court only for the purpose of examining witness making legal investigation and examination of accounts and the Supreme Court has no power to appoint a commission for making an inquiry or investigation into facts relating to a complaint of violation of fundamental rights under Article 32. Court rejected this argument on two grounds, firstly, the poor and the disadvantaged can not possibly produce relevant material before the Court in support of their case an equally where an action is brought on their behalf by a citizen action ( pro bono publico,



It would be almost impossible for him to gather the relevant material and place it before the Court. Therefore in case of persons of weaker sections of society, the report of such Commissioners can be relied. Secondly, the Order XXVI of the code of Civil Procedure is not exhaustive and does not detract from the inherent power of the Supreme Court to appoint a Commission, if the appointment of such Commission is found necessary for the purpose of securing enforcement of a fundamental right in exercise of it's Constitutional jurisdiction under Article 32 and thirdly, Order XLVI of the Supreme Court Rules 1966 can not in any way militate against the power of the Supreme Court under Article 32 and in fact Rule 6 of Order XLVII of the Supreme Court Rules, 1966 provides that nothing in those rules shall be deemed to limit or otherwise affect the inherent power of the Court to make such order as may be necessary for the end of justice.

In M.C.Mehta v. Union of India<sup>5</sup> - Supreme Court again reiterated its power under Article 32 together relevant material by appointing such type of Commission under social action litigation. The court said:

"... this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding namely enforcement of a fundamental right and under Article 32 (2) the Court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right."<sup>6</sup>

The Supreme Court did for the protection of bonded labourer, another commendable job which is the interpretation of Section 2(g) of Bonded Labour System (Abolition) Act 1976 and Article 21 and 23 of the Indian Constitution. The definition of bonded labour system as given in the Act appears to be a narrow definition limited only to a situation, where a debtor is forced to provide labour to a creditor in consideration of an advance. The implementing authorities generally use this definition in releasing the bonded labourers. Even the State of Haryana tried to quibble with this definition in Bandhua Mukti Morcha by arguing that these labourers may be providing forced labour but they are not bonded labourers within the meaning of Bonded Labour System (Abolition) Act 1976. State of Haryana also contended that it could not be compelled to rehabilitate them. Supreme Court tried to set the knot by defining the bonded labour system to include all those cases under it's definition where payment of less than minimum wages are made.

The Supreme Court analysed Article 23 in various cases relating to bonded labourers. In Asiad case<sup>7</sup> and in Sanjit Roy v. State of Rajasthan<sup>8</sup>, the Court interpreted the expression "other similar forms of forced labour", in Article 23 in it's widest amplitude covering every form of forced labour and made no difference, whether the

person forced to give his labour or service to another is remunerated or not and held that if a person provides labour or service to the state or any other person in the payment of less than the minimum wages, he shall be said to provide forced labour, and such a person would be entitled to come to the court for the enforcement of his fundamental right under Article 23 . In Bandhua Mukti Morcha case, Supreme Court applied Article 23 specifically for bonded labourers and said that the system of bonded labour has been prohibited under Article 23 and the Bonded Labour System (Abolition) Act 1976, has been passed to give effect to the Article 23.

Thus it can be said that Supreme Court has done a very good job by interpreting various Articles of the Constitution of India and various sections of the Bonded Labour System (Abolition) Act 1976, for the bonded labourers so it can be said that Supreme Court is a defender and protector of the bonded labourers.

(11) COURT - THE LIBERATOR AND REHABILITATOR OF BONDED LABOURERS:

In fact, it is the plainest requirement of Article 21 and 23 of the Constitution that bonded labourers must be identified and released and on release they must be suitably rehabilitated and any failure on the part of the State Government in implementing the provisions of Bonded Labour System

(Abolition) Act 1976 would be the clearest violation of Article 21 apart from Article 23 of the Constitution. Liberator means, one who can provide liberty and liberty means freedom from restraint under conditions essential to equal enjoyment of the same right by others. In its most signification liberty is said to be a power to do as one thinks fit, unless restrained by the law of the land. Liberty means freedom from restraint. It means freedom to go where one may choose and to act in such manner, noninconsistent with equal right of others, as one's judgment may dictate for the promotion of one's happiness, that is to pursue such calling and avocation as may be most suitable to develop one's capacities and to give them their highest enjoyment. Liberty as far as bonded labourers are concerned means that bonded labourers must be freed from freedom from the debt or any other obligation.

As a liberator, Supreme Court of India is doing praiseworthy job to liberate the bonded labourers. It has entertained letters written by public, spirited citizens, as writ petitions and has issued direction to the Central and various State Governments for their release from the bondage. The Court is taking keen interest in liberating bonded labourers from the clutches of masters, money lenders by issuing direction to the Central and State Govt. for their release and rehabilitation.

In Bandhua Mukti Morcha v. Union of India<sup>9</sup>,

The petitioner, a social action group had made a survey of the stone quarries in Faridabad District in the State of Haryana and found that there were a large number of labourers who were working in stone quarries under "inhuman and intolerable conditions" and many of them were bonded labourers. Almost 99 per cent of the workers were migrant from drought prone areas of Rajasthan, Madhya Pradesh, Andhra Pradesh, Orissa, Bihar and Maharashtra. The Court converted the letter received from Bandhua Mukti Morcha into a petition and appointed its own socio-legal investigating Commission to examine and report the conditions of the workers in the stone quarries.

The Court directed that the workmen whose names were set out in the writ petition and in the report of the Commissioner would be free to go wherever they liked and issued directions to the State of Haryana to constitute, Vigilance Committees in each sub-Division of the District, and to instruct District Magistrate to take up the work of identification of bonded labourers as one of their top priority task and to map out areas of concentration of bonded labourers and to hold periodically, labour camps in these areas with a view to educate labourers. State of Haryana was also instructed to take assistance of non-

political social action groups and voluntary agencies for the implementation of the provisions of Bonded Labour System (Abolition) Act 1976.

The Supreme Court also observed:

"Mere identification and liberation are useless to bonded labourers if they are not properly rehabilitated. Without rehabilitation they are consigned to a life of another bondage to hunger and starvation, and their position will be between the devil and the deep sea. In recognising the importance of rehabilitation of the bonded labourers", the Supreme Court also pointed out "... if the bonded labourers who were identified and freed are or not rehabilitated, their condition would be much worse than what it was before during the period of their serfdom and they would become more exposed to exploitation and slide back once again into serfdom even in the absence of any coercion".<sup>10</sup>

The case of Neeraja Chaudhary v. State of Madhya Pradesh,<sup>11</sup> in which Neeraja Chaudhry a journalist addressed a letter to a Judge of Supreme Court complaining that 135 bonded labourers working in Faridabad were not rehabilitated after their release from the bondage. As a result they were starving in their villages. Though the letter was treated as a writ petition but for the sake of completeness, the petitioner filed a regular petition. This case illustrates the apathy of the Government and sympathy of the Court for the bonded labourers. The Court observed that Article 21 and 23 of the Constitution requires that bonded labourers must be rehabilitated after their release. Court issued directions to Madhya Pradesh Government to include the representatives of

social action groups in the Vigilance Committees and to give them full support and co-operation for the purpose of identification and release of bonded labourers. In this case, Supreme Court has laid much emphasis on the Vigilance Committees and the Officers working therein. Vigilance Committees were required to make an intensive survey of the areas prone to the system of bondage and their officers were to be trained and sensitised.

Supreme Court also observed that, "It is not enough merely to identify and release bonded labourers but it is equally perhaps more important that after identification and release, they must be rehabilitated, because without rehabilitation they would be driven by poverty, helplessness and despair into serfdom once again."<sup>12</sup>

In Mukesh Advani v. State of Madhya Pradesh<sup>13</sup>, Mukesh Advani an advocate practising in Supreme Court addressed a letter to one of the judge of the Court annexing a cutting from Indian express depicting horrified plight of the bonded labourer working in stone quarries at Raisen in Madhya Pradesh. The allegations were that the contractors recruit labour force from Tamil Nadu. Every one recruited was paid roughly an advance of Rupees one thousand and then brought to work at the mines. This amount of one thousand was reimbursable by deductions spread over from month to month

from the wages payable to bonded labourers, but the method of accounting was so manipulated that the debt of Rupees one thousand was never wiped out and on the contrary it increased by geometrical proportion. The workmen went deeper into the mire of indebtedness with the result the Octopus hold of the contractor became all enveloping and the workmen became bonded labourers. This case is an illustration of debt bondage, where bonded labourers were lured by the contractors and were subjected to work under inhuman conditions. The Supreme Court came to their rescue by entertaining a letter as writ petition and directed District Judge, Bhopal to enquire and report the conditions of bonded labourers working in stone quarries at Raisen. After being satisfied from the report of District Judge, the Court issued a direction for the release of bonded labourers to the government with the following observation and directions-

"....No employer can play less than minimum wages. But this remains a paper promise, unless an effective implementation machinery.... is set up. We conclude with a hope that such a machinery would be set up jointly by the Union of India and State of Madhya Pradesh."<sup>14</sup>

In case of P. Sivaswamy v. State of Andhra Pradesh<sup>15</sup> a letter written by the Ex-services organisations at Tirukkoyilur in South Arcot District of Tamil Nadu alleging prevalence of bonded labour in stone quarries in several districts of Andhra Pradesh



and other areas was registered as writ petition. The Court directed District Magistrate, Hyderabad to visit the site and to make a report within two weeks. The Court again directed State of Andhra Pradesh to file an affidavit setting out in detail facts and figures, showing how many bonded labourers have been identified and released in different district of state since 1.1.83 and whether they have been rehabilitated and if so in what manner and whether there is any follow up action. The Court also directed to set up at a very early date in all the district and subdivision of the State Vigilance Committees and to include social activities in it.

Supreme Court also directed Shri Lakshmidhar Misra Joint Secretary Ministry of Labour, Government of India to visit the stone quarries at Kailasapuram and to hold an enquiry for the purpose of ascertaining whether the labour welfare legislations, are being observed. Mr. Lakshmidhar Misra submitted his report indicating violation of Mines Act 1952 Mines Rule 1955, Mines Vocational Training Rules, Mines Creche Rule, the Contract Labour Act and Minimum Wages Act. The State of Andhra Pradesh and the Central Government considered the report and took action as a result about 2200 bonded labourers were freed and sent to their respective villages falling in States of Andhra Pradesh, Tamil Nadu, Karnataka and Orissa. These states were also directed by Supreme Court

to constitute Vigilance Committees for the rehabilitation of bonded labourers. The Court further directed to involve social action groups and voluntary agencies in the rehabilitation programmes. Rehabilitation was to be provided in the presence of representative of such social action groups or voluntary agencies so as to ensure that rehabilitation provisions actually reaches in the hands of bonded labourers.

Supreme Court directed the States of Tamil Nadu, Karnataka and Orissa to take immediate steps for the rehabilitation of 1417 bonded labourers released from the site of Ranga Reddy District and to submit a report to the Court. But on the 6th October, 1987, when the matter was again listed, the Court was surprised to know that after elapse of three and half years no compliance on behalf of states were made. The Court passed strictures against the states.

In Balram v. State of M.P.<sup>16</sup> Supreme Court issued certain directions to the Central Government and it's officials, to release adequate funds under the scheme to meet its liability under the Act. The Court further directed that the Collector and other Officers who have been assigned the responsibility of supervising rehabilitation shall ensure that the full amount intended for the freed bonded labourers reaches them. The Court also directed to open an account in the Bank in their respective names.

Earlier, in the case of People's Union for Democratic Right v. Union of India,<sup>17</sup> popularly known as Asiad case in this case a social action group known as People's Union for Democratic Right, had produced a very shocking report regarding the exploitation of migrant contract in labourers engaged in the construction of the prestigious. Asian games stadia in New Delhi. These workers were not paid their minimum wages and a part of their wages was expropriated by Jamadar's through whom the workers were recruited by contractors. The Court directed the Delhi Administration and Delhi Development Authority to provide immediate relief to workers and held that every form of forced labour comes under Art.23. Asiad case thus raises the right to minimum wages to the status of fundamental right. The Bandhua Mukti Morcha, Neeraja Chaudhary, Mukesh Advani, Sivaswamy, Balram and Asiad cases provide a favourable legal setting for the social action group to use the law strategically to compel the state and its agencies to implement the policy underlying Bonded Labour System (Abolition) Act 1976. The activism of the court, through public interest litigation can be a useful medium to liberate the bonded labourer and to provide a new ethos in the justicing system. These decisions have the potential of awakening the political and legal system and

to provide social justice to bonded labourers. If the Courts, social action groups and voluntary organisations respond to call given by the Court, to approach it through public interest litigation. The bonded labourers can surely be liberated from the bondage and exploitation<sup>18</sup>.

(iii) COURT- THE HELPER AND SUPERVISOR OF BONDED LABOURERS:

The procedure used in the Court is so complex and confusing, that justice can be obtained, only by engaging advocates and paying them a handsome amount as their fee which is beyond the reach of poor. The judicial system is not in position to bring changes in the life condition of the poor. Our Courts have become courts for the poor rather than the Court of the poor.

In Asiad case the Court observed:

The courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the Courts for protecting their wasted interest. It is only the moneyed who have so far had the golden key to unlock the doors of Justice".<sup>19</sup>

Millions of people belonging to the deprived and vulnerable sections of humanity are looking to the Courts for including their life to conditions and making basic human rights meaningful for them. The Courts are not meant only for the rich and well to do, for

the landlords and business magnate, but they exist also for the poor and down trodden, the have-nots and handicapped. Therefore when the fundamental rights of poor are flouted, when the atmosphere of exploitation, torture and fear is created,<sup>20</sup> when the basic element of care comfort, necessities to sustain life is refused, when injustice and inhumanity emerges and the legislative protection is ignored, it will become the Constitutional obligation of the Court as a guardian of fundamental rights of the people to break the fetters to right the wrong<sup>21</sup> and to restore justice to them.

In a welfare state, it is the society which has to develop it's welfare means. No society can have a welfare out-look, unless it gears up on the basis of amity, friendship, co-operation, consideration and compassion. If every one living in India is willing to believe in the 'live and let live' principle, he would be prepared to devote the same attention to people around him as he is willing to devote for himself.<sup>22</sup> Judges, though brought up and trained in western style, are also the product of our society where these inequalities flourish. They are very much sensitized towards the social evils. Therefore they have come up to the occasion where there is violation of human rights.<sup>23</sup> Where there is torture and ill treatment,<sup>24</sup> where human

being are treated like animals,<sup>25</sup> where young boys,<sup>26</sup> woman<sup>27</sup>, and young inmates<sup>28</sup>, are denied justice. Poor as well as bonded labourers generally live in slums and in the vicinity of factories and of the work place, they face hazards of pollution. Courts have helped these poor and bounded directly and indirectly by issuing many directions to stop pollution<sup>29</sup>, and to provide healthy environment<sup>30</sup> and to protect health and strength of its inhabitant and to promote positive good for them and favourable social and economic condition in the society.<sup>31</sup>

In Neeraja Chaudhry,<sup>32</sup> Supreme Court did not receive much resistance from the State Government for the release and rehabilitation of bonded labourers, which shows the effect of the Court on the government to protect and uplift the bonded labourers. The effect was continuous due to very wide publicity of the cases, which can be seen in Sivaswamy's case,<sup>33</sup> where the State Government have not only released and rehabilitated bonded labourers but also has come up with certain suggestions for the purpose of ensuring observance of the labour laws for their benefits.<sup>34</sup> In the case, the Court could asked for an affidavit from the parties, decide the outrightly and issued the directions, but the court followed a peculiar procedure, making orders for release and rehabilitation from time to time. The Court also

kept on verifying about the action taken by the various State Governments and Central Governments. The court directed to three States namely, Orissa, Karnataka and Tamil Nadu to provide rehabilitation to the freed bonded labourers, and to furnish a complete affidavit, indicating the number of rehabilitated bonded labourers. The Court also cautioned the States that unless a compliance report is furnished, each of the State shall be treated to be in contempt of Court.<sup>35</sup>

NOTES AND REFERENCES

1. (1982) 2 SCR 365; AIR 1982 S.C. 149
2. (1982) 3 SCC 235; AIR 1982 S.C. 1473
3. (1984) 3 SCC 161
4. Ibid.
5. (1987) 1 SCC 395 at 407
6. Ibid., at P. 407-8
7. Supra, Note 2
8. (1983) 1 SCC 525
9. Supra, Note 3
10. Ibid., at P. 828
11. AIR, 1984, S.C. 1099
12. Ibid., at P. 1100
13. (1985) 3 SCC 162
14. Ibid., at P. 168
15. AIR 1988 S.C. 1863
16. AIR 1990 S.C. 44 Hereinafter referred as Behram case
17. Supra, Note 2
18. Perma Nand Singh, "Bandhua Mukti Social Action and the Supreme Court", 12(2) Ind. Bar Rev., 1985, P. 239
19. Supra, Note 2 at P. 242
20. See Charles Sobraj v. Superintendent Central Jail Tihar, New Delhi (1978) 4 SCC at 109
21. Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC, 488
22. See Bandhua Mukti Morcha v. Union of India, AIR 1992 S.C. 38 at P. 49



23. Munna v. State of Uttar Pradesh (1982) 1 SCC 545
24. Sheela Barse v. State of Maharashtra (1983) 2 SCC 96
25. Dr. Upendra Baxi v. State of Uttar Pradesh (1983)  
2 SCC, 308
26. Kadas Pehadiya v. State of Bihar (1981) 3 SCC 671
27. Hussainara Khatoon(I) v. Home Secretary of Bihar  
(1980) 1 SCC 81
28. Supra, Note 21
29. M.C. Mehta v. Union of India, (1986) 2 SCC 176
30. Subhash Kumar v. State of Bihar, AIR 1991, S.C. 420
31. Azad Ricksha Pullars Union v. State of Punjab;  
(1980), Supp. SCC 601
32. Neerja Chaudhry v. State of M.P., (1984) 3 SCC 243
33. Supra, Note , 15
34. Ibid., at P. 1864
35. Ibid., at P. 1867

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C O N C L U S I O N

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An indepth study of the problem of bonded labour system as undertaken in the preceding chapters reveals that the problem involve is really the problem of economic justice with which the problem of social justice is intimately connected. From Time Immemorial radical have opposed inequality. Many thinkers have advocated the redistribution of wealth from rich to the poor , and of power from the rulers to the exploited. But inequalities in social and economic positions continue to exist. Absence of distributive justice in the sharing of material goods and services has inevitably created certain groups which suffer economic misery placement at a lower level in the social hierarchy. Interaction of social and economic factors by its very nature produce class conflicts. Obviously, class conflicts lead to the dominance of a few economically and politically powerful section who possesses the political power nor the social status of that degree that they may not be a victim of exploitation of the higher echelon of the society.

Bondage due to social custom prevaild since the ancient times with the help of caste hierarchy in different forms. In this system bonded labour or the agrestic slave

is subject to all kinds of restrictions and controls of his master. Such a controlled person cannot do anything else other than what his master asked him to do. They were caught in the vicious circle of economic dependence due to poverty which led to their exploitation and social opperession. Agrestic slave system was not only justified but also glorified by the religious scriptures as they were written by those who enjoyed the advantages of the system. It killed the aspirations of those were viti-mised by the system.

A large section of our people are driven into the situation of bondage by extensive poverty and resource lessness, these unfortunate people have sunk to a level where merely to keep alive they must abandon all sense of individual dignity and pride, any little attachment to a little freedom, to any privacy. That things have so happened is symbolic of a much deeper malaise in the body-politic of India, and further suggests that even the guardians of the conscience of the nation, and protectors of its moral sense have somehow, perhaps inadvertently, ignored, or overlooked, what should have been one of their concerns. For, after all it is they who

normally should be in a position and should have the ethical duty to tell and point out to the nation, specially to those who enjoy, relative wealth, power and prestige, what is permissible, and what is not, that the dignity of a human being must not be eroded any further, in India, that is the primary task of the nation to restore back the dignity of its individual citizens, which has now for generations been our heaviest casualty.

National as well as International Laws have tried to make bonded labourers human beings by conferring various rights. Our constitution contains enough provisions both of a mandatory and directory nature to usher in socio-economic justice in a secular democratic framework of the government established under its mandate. The words SOCIALIST AND SECULAR have been specially introduced in the preamble of the constitution which occupies a pride of the place in our document destiny. So viewed, our constitution expresses a commitment to realise the goal of distributive justice through socio-economic reform.

After independence the Constituent Assembly while designing a Constitution for India besides other problem had to deal with problems of 'traffic in human being' 'begar' and 'other similar forms of forced labour',

the result of the deliberations was Article 23 of the Constitution. This was one of the rights against exploitation incorporated in the Chapter on the Fundamental Rights in the Constitution. To give an effect to the Article 23 of the Constitution the Bonded Labour System (Abolition) Act 1976 enacted by Parliament which provided for the abolition of the "Bonded Labour System" with a view to preventing the economic and physical exploitation of the weaker section of the people.

Bonded Labour System (Abolition) Act to abolish this evil of the country could not proved a complete successful definition of the bonded labour system given under the Bonded Labour System Act is a narrow definition limited only to a situation where a debtor is forced to provide labour to creditor. This definition may be objected on the ground that persons who are forced to provide labour may be forced labourer but unless it is shown by them by proper evidence, that they are forced to provide about against bonded debt that can not be said to be a bonded labourer.

The Supreme Court's decisions in Asiad Workers case (1982) and Bandhua Mukti Morcha Case (1984) have added a new dimension to the definition of the term bonded labour

system. Justice P.N. Bhagwati who was the main architect of decisions in both these cases, viewed this whole problem as one of exploitation of the economically weaker sections of society. The judgment in *Asiad* case was extremely significant in the sense that for the first time the court held that a mere denial of minimum wages to a labourer amounted to infringement of the fundamental rights incorporated in Art. 23 of the constitution. This prohibition, according to the Court, was conceived in very general terms and operated as much against the State as against a private individual. The state was under its constitutional obligation to enforce the minimum wages fixed by law and any abdication on the part of the state would be nothing less than violation of the fundamental rights of a person who has been denied minimum wages for the work that he renders.

Although the entire argument was developed by the court primarily in order to justify its assumption of jurisdiction in the writ petition under Article 32, yet the implications were of far reaching consequences. The term 'Forced Labour' as interpreted by the Court virtually meant any labour rendered for a wage less than the minimum wage fixed by the law, and thus, attract the prohibition of article 23 of the Constitution. In fact, the Court went a step further in Sanjit Ray Case (1983), and held that "Whenever any labour and service is taken by the state from any person, whether he be affected

by drought and scarcity conditions are not, the state must pay, at the least, minimum wage to such a person on pain of violation of article 23".

The Court in Bandhua Mukti Morcha had no occasion to delve on the other possible kinds of 'forced labour' which would come within the parameters of the definition of the term bonded labour system' under sub clause (g) of the section 2 of the Act. The court had no difficulty in extending the term 'bonded labour system to Migrant workers who were confined to stone quarries of Faridabad because it had already held in Asiad case that contract workers and Migrant workers can be bonded labourers if it is proved that, they are required to render, labour in circumstances mentioned in sub-clause (1) to (4) of section 2(g) of BLSAA. It is pursuant to this that the Act was amended in 1985 and an explanation was added to this subclause for the purpose of removal of doubts as regards the two categorie of workers defined as contract workers and Migrant workers under their respective Acts.

Judicial Activism has created a favourable condition for the bonded labourers and has improved their living by treating a post card as writ petition. Supreme Court in its various decisions has violated its rules to help the bonded laboures.



Ambit and scope of Article 21 and 32 of the Constitution has been widened due to various decisions of the bonded labourers.

The Bonded Labour System (Abolition) Act 1976 has not proved effective measure for the this social evil. Reasons of failure of the legislation can be assigned to the dominant position of the bond masters, who holds huge land, comes from high caste, his caste support, and can also influence the executive. While the bonded labourers in whose favour laws are made are poor, belong to the under privileged low castes, Acts passed by the states in response to the constitutional provisions against the practice bonded labour system in India, did not serve the purpose because their execution is left to the bureaucracy who has no sympathy for the bonded labourers. Most of the States are reluctant to accept the prevalence of bonded labour system, giving the impression that there is no need for legislation as the bonded labour system in practice had completely died out. Bhagwati, J. aptly remarked in Bhandhua Mukti Morcha Case that "It is not uncommon to find that the administration in some States are not willing to admit the existence of bonded labour even though it exists in their territory and there is incontrovertible evidence that it does so exist".

The goofy attitude of our bureaucrats in identification of bonded labourers was exemplified in the anecdote remarked by Justice P.N. Bhagwati in Neereja Chaudhury case. By the order of the court a Tahsildar went to a village sitting on the dais along with the landlords by his side, he started enquiring of the labourers whether they are bonded or not and when the labourers, obviously inhibited and terrified by the presence of landlords said that they were not bonded but they are working freely and voluntarily and it was so recorded by the Tahsildar in his report.

Mere identification and liberation are useless to bonded labourers if they are not properly rehabilitated. Without rehabilitation they are consigned to a life of another bondage to hunger and starvation, and their position will be between the devil and the deep sea. In recognising the importance of rehabilitation of the bonded labourers. The Supreme Court in Bandhua Mukti Morcha Case, pointed out, "if the bonded labourers who were identified and freed are or not rehabilitated, their condition would be much worse than what it was before during the period of their serfdom and they would become more exposed to exploitation and slide back once again into serfdom even in the absence of any coercion". Reiterating the importance of rehabilitation the Supreme Court again stated in Neeraja Chaudhry

case, "It is not enough merely to identify and release bonded labourers but it is equally perhaps more important that after identification and release, they must be rehabilitated, because without rehabilitation, they would be driven by poverty, helplessness and despair into serfdom once again".

Thus, the Court established that the rehabilitation was the constitutional right of these miserable persons. The state is bound to rehabilitate the bonded labourers after they are freed from bondage. The effective rehabilitation is necessary to fulfil the purpose of the Act. To check the misuse of fund rehabilitation assistance must be provided by the Government in the direct presence of representatives of social action groups. The kind of rehabilitation assistance should be determined by Vigilance committee. The essential needs for life, such as, food, cloth, shelter, education facility for their children and health and medical care, must be provided to them. It is not possible at the Government level to do all these things. The Government has multifarious functions to perform. Therefore to carry out above objectives the assistance of "social action groups" and "voluntary agencies" should be taken in the process of rehabilitation. The inadequacy of the Government action is not the only cause, the environmental lack is also contributing for failure of various plans. If the

freed bonded labourers are not rehabilitated it would be violative of the Act and the constitutional mandate and also of their fundamental rights under Articles 21 and 23.

The recent Judicial Activism shows that the suitable action had been taken by the court for freeing bonded labourers from bondage and restoring to them the liberty guaranteed under the constitutional in all appropriate case, came before the apex court of the country. Action taken by the court had the effect of creating an awareness not only in the minds of the sufferer but had also helped to an extent in removing the inertia and lethargy in the administration which started taking appropriate steps for implementation of the provisions of this eminently beneficial social welfare legislation either on the basis of the directions given by the Supreme Court or in its own initiative .

The Judiciary is giving a sense of emancipation to the static, sleeping wing of the society, making conscious to the unconscious souls, enlightening them with their constitutional rights through equal justice. Albeit, for removing such social evil, viz. blot on the Indian constitution, judiciary has to take stern attitude towards the accountable persons for not showing the due sincerity on their part, for the Bonded Labour System (Abolition) Act, 1976. Hence the dullness of enforcement authorities

involved in implementing the said law, should not only be condemned but also be punished according to the culpability, then only the concepts of identification, freedom and rehabilitation, can be made real one.

So as long as bonded labourers are not made aware of their exploitation and are not organised to demand their rights, social legislation of this kind will not make any substantial impact on their lives. Committed Lawyers, social activists voluntary organisations and public spirited persons can play a major role in supporting ignorant and illiterate bonded labourers in their struggle to eradicate this exploitative labour system and to find the economic means to live with human dignity.

There can be no disagreement in the nation that this question has to be attended to both adequately and urgently. Furthermore as there are no instrumentalities besides what we have, however blunted and insensitive they may have become they somehow have to be made to perform this task. That the elimination of this heinous practice and the rehabilitation of its victims is now immediately attended to is something in which the whole nation has to play its part, and its conscience keepers and protectors of its moral sense have to provide the necessary lead.

SUGGESTIONS

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- 1) If 'bonded debt' is to be the foundation of all bondage, then sub-clauses (ii) to (v) and (2) to (4) of sub-clause (g) of Section 2 need not be there at all. But the fact that 'bondage' other than 'debt bondage' was within the contemplation of the law makers, they did not fail to expressly provide for such situations. However, their clear intention appears to have been clouded by the manner in which it was formulated.

It is suggested that a slight modification in the existing definition of the term 'bonded Labour System' under section 2 (g) alongwith a few changes in the definition of the term 'bonded labourer' under section 2 (t) would be necessary to remove doubts and ambiguities that have come to the surface in the past. It would also be necessary to modify the statement of objectives appended to the Act to make it abundantly clear that the Act seeks to abolish and prohibited all forms of forced labour ' as contemplated in Art. 23 of the constitution. The Section 2 (f) and 2 (g) should be substituted by following :

"Section 2(f) "bonded labourer" means a labourer who provides or is providing or has provided labour or service in lieu of an advance or consideration which is less than minimum wages?

- 2) The strict enforcement of the Agricultural Minimum Wages Act backed by social legislation and people's action might be the answer to the problem.
- 3) The bare foot "legal advisors" and "Mobile Law Court" could resolve the problem.
- 4) If the weaker segments of the society are to be given some preferential treatment in the name of 'social justice', all the released (unbonded) labourers should be given some permanent employment in the Central or State Government Service according to their capabilities.
- 5) Since the Bonded Labour System (Abolition) Act 1976 was passed by the Indian Parliament, the administrative apparatus could not make the desirable progress in identification, release and rehabilitation of Bonded Labourer. The failure cannot be attributed merely to the inherent dysfunctional quality of the administrative system but predominantly to its structurally in-built non-reform and non-emancipation character.

- 6) The Indian Parliament should set up a "National Council for the Liberation and Rehabilitation of Bonded Labourers".
- 7) The Social Welfare Minister should be the Chairman of the National Council. The Council shall consist of Labour Ministers of the States Members of Parliament, selected social workers and social scientist and any other persons which may be decided upon .
- 8) At the district level the implementing authority shall be as laid down in the Act and it shall be directly accountable to the National Council.
- 9) If any person brings a complaint before the court that a particular person or persons are working as bonded labourers. The States should cooperate in the inquiry instead of opposing the case.
- 10) Provision for legal aid to the bonded labourers should be made in the Act.
- 11) Result oriented educational programmes should be conducted for the agricultural bonded labourers to make them aware of their rights and human dignity.



- 12) The Central Government should every year place on the table of the parliament a report on the measures taken by itself and by the State Government in pursuance of the provisions of the Act.

The Bonded Labour System (Abolition) Act is one of the most progressive reforms the Indian State has ever undertaken for the emancipation of a substantial section of the deprived, disinherited and persecuted groups of our society. But the sincerety, ethical quality and social commitment of the political elite can only be measured by the degree of their political will to implement the Act of which they are the architects. Furthermore, the mere enactment of legislation cannot solve such problems. What is required is creation of appropriate devices resulting in the right environment where the human individual is conceded his due dignity and rights. So far there has been a great gap between our precepts and practices. The humane character of this bold and progressive reform has so far continued to stay just as a resolve. The need is, as would be agreed by all now, to translate it into concrete reality.

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\* B I B L I O G R A P H Y \*  
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BOOKS:

1. Aalen, C.K., Aspects of Justice : Stevens and Sons, London, 1955 Edition.
2. Anand Sahay, Bonded Men and their masters ;
3. Austin, Granville., Constitution - A cornerstone of Nation ; Clarendon Press, Oxford, 1972 Edition.
4. Dr. Bakshish Singh, The Supreme Court of India as an Instrument of Social Justice ; Sterling Publishers Pvt. Ltd. New Delhi, 1976 Ed.
5. Banerjee, D.N., Our Fundamental Rights (World Press Calcutta, 1988).
6. Bhagwati, P.N., Law as Instrument of Change ; Society for Community Organisation Trust, Madurai, 1985 Edition.
7. Bindra, N.S., Interpretation of Statutes (Law Book Company, Allahabad, 1984).
8. Dr. Chaturvedi, R.G., Natural and Social Justice ; Law Book Co., Allahabad, 1975 Ed.
9. Dhamne, P.S., Summary Report on Forced Labour, (Government of India Press, Simla, 1956).
10. Dicey, A.B., Law of Constitution (Macmillan, New York, 1962).
11. Dubey, Anand K.: Social Justice and Bonded Force in India, Rawat Publishing Co. Jaipur 1989 Ed.
12. Ejeiofer, Gaius, Protection of Human Right under the Law (Butterworth, London, 1964).

13. Fawett, J.E.S., The Application of European Convention on Human Rights, Oxford, The Clarendon Press, 1969 Ed.
14. Gajendragadkar, P.B., Law, Liberty and Social Justice ; Asia Publishing House, Bombay, 1965 Ed.
15. Hasan, Shariful : S.C. : Fundamental Rights and Directive Principles.
16. Husnain, Nadeem : Bonded for Ever, Hamam Publications, New Delhi, 1982 Ed.
17. Iyer, V.R.Krishna, J. Judicial Justice (A New Focus towards Social Justice) : N.M., Tripathi Pvt. Ltd., Bombay, 1985 Ed.
18. Jain, M.P., Indian Constitutional Law ; N.M.Tripathi Pvt. Ltd., Bombay, 1978 Ed.
19. Kamble, N.D. : Bonded Labour in India, Uppal Publishing House, New Delhi, 1982 Ed.
20. Laskar, Sirajul Islam, Directive Principles of State Policy in India (Deep and Deep Publications, New Delhi, 1980)
21. Miller, David, Social Justice : Clarendon Press, Oxford, 1976 Ed., Reprint, 1979.
22. Palkhivala, N.A., We, the people : Strand Book Stall, Bombay, 1984 Ed.
23. Pandey, J.N. : Constitutional Law of India, Central Law Agency, 1994 Ed.
24. Patnaik, Usha and Dingwaney, Manjari "Chains of Servitude : Bondage and Slavery in India, Madras, Sangam Pubs., 1981.
25. Prakash, S.S., Bonded Labour and Social Justice (Deep and Deep Publications, New Delhi, 1990).

26. Rao, Subba : Social justice and Law, New Delhi, 1974 Ed.
27. Reddy, P. Jagan Mohan : Social Justice and the Constitution, Andhra University Press, Waltair, 1976 Ed.
28. Kustumji, R.F., Law of Industrial Disputes in India : Asia Publishing House, Bombay, 1964 Ed.
29. Seervai, H.M., Constitutional Law of India, Vol. I, N.M. Tripathi Pvt. Ltd., Bombay, 1983 Ed.
30. Singh, S.K., : Bonded Labour and the Law, Deep and Deep Publication New Delhi, 1994 Ed.
31. Singh, K.P., Constitutional Law of India : Central Law Agency, Allahabad, 1979 Ed.
32. Ulrich, Karpen, Human Rights in the Constitution of Western World : Some Interpretational Trend in M.P. Singh, Comparative Constitutional Law (Eastern Book Co. Lucknow, 1989).
33. Vyas, N.N., Bondage and Exploitation in Tribal India : Rawat Publications, Jaipur, 1980 Ed.
34. Wood bridge, G., The History of the United Nations Relief and Rehabilitation Administration (New York, Columbia University Press, 1950).

#### ARTICLES :

1. Bhagwati, P.N., Age of Activism (Interview), India Today, Aug. 15, 1985, P. 97.
2. Bhagwati, P.N., "Effective uses of Law by Social Action Groups, 8 Aligarh Law Journal (1983).

3. Bhagwati J. in an interview to "The Lawyers Collection," August 1986, Vol.I No.8
4. Chandrachud, V., The Challenge of Social Justice, C. and MLJ, Vol.20, No.102, p.9
5. Eacharan, V : Abolition of Bonded Labour and after, Vanyajate, Vol.XXIV, No.3 July 1976.
6. Gandhi, Indira : Bonded Labour, Social Welfare (Suicides in India) Vol. XXIII, No.3 June 1976.
7. Garg, R.B.L., "Bonded Labour : Looking a Fair Deal, 75 Eastern Economist (1980).
8. Govt., Can not flout Court's Orders, The Hindu, June 26, 1986, p.9.
9. Gupta, V.P., What is Bonded Labour ? Lab. and I.C. Vol.19, Jan.1986, p.13.
10. Haragopal Reddy, Y.R., SC on Bonded Labourers : Future of New Constitution, CULR , Vol. VIII, Dec. 1984, p.539.
11. Hussain, Dalwai, "Bonded Labour Continues," 12 Economic and Political Weekly (1977).
12. Iyer, V.R.Krishna, "Our Founding Deed and Our Fighting Creed-some thoughts on their Future," C and MLJ, Vol-20, No.102.
13. Jagadish Bhatt, Where Freedom Means Misery, Indian Express, March 19, 1986, p.4.
14. Kaushal, Shri JaganNath, "Social Justice and its Challenge," C and MLJ, Vol.20 No.102.

15. Lal, A.K., Bonded Labour in India, 22 Social Welfare (1976).
16. Parmar, O.P., ILO and India in pursuit of Human Rights through Labour Standards; JILT.Vol.23 : 4, 1981, p.555.
17. Pavani, P., Article 21, Introduction of Due Process " 15 Indian Bar Review (1988).
18. Nakesh Nanjan, The system of Bonded Labour and its relationship with agriculture productivity-Some observations, Administrator, Vol. 29 No.1 Jan-March-1992.
19. Reddy, Y.R.Hargopal, "Supreme Court on Bonded Labourers : Future of New Constitutionalism." 8 C.U.L.R. (1984).
20. Sharma, Marla, "Bonded Labour in Medak District" N.L.I. Bulletin (1977).
21. Singh, Dr.Surendra, "Towards Emancipation and Rehabilitation of Bonded Labour in India" LLJ, Vol.XVIII, Aug.1976, No.8
22. Sharma, Marla, "Bonded Labour in Medak District" NLI Bulletin (1977).
23. Sunil, K.P., of Human Bondage ; Illustrated Weekly of India, June 1-7, 1986, p.8.
24. Surendra Mohan, K., Public Interest Litigation and Locus standi, CULR, 1984, p.530.
25. Up from slavery, Landlords and Liberated Bonded Labourers on a Confrontation Course, The Week, Dec.22-28, 1985, p.32
26. Venkata Raman, Dr.S., 1984-The Orwellian Year, I An.W.R., Jan. 25, 1985, p.3.

STATUTES :

1. The Bengal Regulation Act, 1806.
2. The Bihar Money Lenders Act, 1938.
3. The Bombay Money Lenders Act, 1946.
4. The Bonded Labour System(Abolition) Act,1976.
5. The child Labour (Prohibition and Regulation) Act 1986.
6. The Constitution of India.
7. The Contract Labour (Regulation & Abolition) Act, 1970.
8. The convenent of Human Rights, 1950.
9. The Debt Bondage (Abolition & Regulation)Act of Orissa 1940.
10. The Indian Penal Code, 1861.
11. The Inter-state Migrant Workmen(Regulations of Employment and Conditions of Service)Act, 1979.
12. The Kamiana Agreement Act of Bihar,1920.
13. The Madras Compulsory Labour Act,1858.
14. The Mines Act, 1952.
15. The Minimum Wages Act, 1948.
16. The Rajasthan Famine Relief Works Employees Exemption from Labour Laws) Act,1964.

DEBATES :

1. Constituent Assembly Debates,Vol. VII;
2. R.S.D. Vol. XCIV,No.6,12th January 1976.
3. R.S.D. Vol. CXXXVI, No.2 Col.289, dated 19 November 1985.
4. L.S.D.(English Version) Vol.XII No.24,December 20,1985 Col.357.



1. "Bonded Labour in India", National Survey on the Incidence of Bonded Labour, Final Report, Jan 1981.
2. Bonded Labour and its Abolition, Volume I; Report National Centre for Human settlements and Environment (N.C.H.S.E), New Delhi 1987.
3. National Commission on Rural Labour, A Note on Bonded Labour, March 1989.
4. Planning Commission, Evaluation of Contrally, sponsored Scheme for Rehabilitation of Bonded Labour (Final Report), Programme Evaluation Organisation (PEO), Govt. of India, New Delhi, March 1984.
5. Report of the National Commission on Labour, 1969.

DICTIONARY AND ENCYCLOPAEDIA :

- \* Blacks Law Dictionary 4th ed. 1951
- \* International Encyclopedia of Social Sciences, Vol. 14 p.376, Social Contract, Will Moore Kendall.
- \* Encyclopaedia of the Social Science, Macmillan Company, New York, 14th Printing, 1962.
- \* The New Encyclopaedia Britannica Vol.16th,18th Ed.
- \* Wilson's Glossary, Glossary of Judicial and Revenue Terms, by H.H. Wilson, published by London, Win. H. Allen & Co., p.70 BE.

LIST OF CASES :

1. A.G.V.Enrol, Mc Whirter V. Independent Broadcausting Authority (1973) 1. All E.R.
2. Azad Rickshaw Pullars Union V. State of Punjab(1980) Supp, S.C.C.601.
3. Bailly V. Alabama (1910) U.S.219,13th Amendment of the U.S. Constitution.
4. Bandhua Mukti Morcha V. Union of India, A.I.R. 1984 S.C. 802.
5. Bandhua Mukti Morcha V. Union of India, AIR 1994 SC 38 .
6. Balram V. State of Madhya Pradesh (1990) S.C.44
7. Barrs V. Bethell (1981). 3 W.L.R.
8. Charles Sobraj V. Superintendent,Central Jail Tihar, New Delhi,(1978) 4 S.C.C.104.
9. Deena V.Union of India, AIR 1983 S.C. 1155.
- 10.Express News Paper (Pvt.) Ltd. V. Union of India, AIR 1958 S.C. 578.
- 11.Fertilizer Corporation Kamgar Union V.Union of India AIR 1981 S.C.344.
- 12.Francis Goralie Mullim V.Administrator,Union Territory of Delhi and Others(1981) S.C.C.608.
- 13.G.Venkateswara Rao V.Government of Andhra Pradesh (1966) (2) S.C.R.
- 14.Golak Nath V.State of Punjab, A.I.R. 1967 S.C.1643.
- 15.Mussalnara Khatoun V.State of Bihar, A.I.R. 1979 S.C. 1360,

16. Hussainara Khatoon (I) V. Home Secretary of Bihar  
(1980) 1 S.C.C.,81.
17. In Reed Bowen and Co.(1887) 19 QBD 174
18. Janta Dal V.H.S. Chaudhry (1992) 4 SCC 305.
19. Kadras Kehadiga V. State of Bihar (1981) 3 S.C.C.671.
20. Keshavananda Bharti V. State of Kerala, AIR,1973 S.C.1401.
21. Kharak Singh V. V.State of U.P. AIR 1963, S.C.1295.
22. M.C.Menta V. Union of India (1987) 1 S.C.C.395.
23. M.C. Mehta V.Union of India (1987) 1 S.C.C.395.
24. Madras V. Champakam Dorai Rajan, AIR, 1951 S.C.226.
25. Maneka Gandhi V. Union of India, AIR, 1978 S.C. 597
26. Minerva Mills Ltd. V. Union of India (1980) 3 S.C.C.625.
27. Muir Mills Ltd. V. Suti Mill Mazdoor Union AIR 1955,  
S.C. 170.
28. Mukesh Advani V. State of Madhya Pradesh AIR 1985,  
S.C. 1365.
29. Mumbai Kamgar Sabha V.Abdul Bhai AIR,1976 S.C.1455.
30. Munna V.State of Uttar Pradesh (1982) 1 S.C.C. 545.
31. National Textile Workers Union V. Ram Krishna A.I.R.  
1983 S.C. 75.
32. Neerja Chaudhry, V. State of Madhya Pradesh AIR 1984  
S.C. 1099.
33. Olga Tellis V.Bombay Municipal Corporation (1958) 3,  
SCC.549.
34. P. Sivaswamy V.State of Andhra Pradesh(1988) S.C.1863.
35. Peoples Union for Democratic Rights V. Union of India  
(1982)3 SCC 235.

36. Polychem Ltd, R.D.Tulpule, AIR 1972 S.C.1967.
37. Premchand Garg V.Exaise Commissioner, AIR 1963 S.C.996.
38. R V. Greater London Council, Exparte Black burn  
(1976), 3 All. E.R.
39. R.V.Metropolitan Police Commissioner Exparte Black burn  
and others(1973) All E.R.
40. R.V.Metropolitan Police Commissioner, Exparte Black bum  
(1968) 1. All E.R.
41. S.Vasudevan V.S.D. Mittal, AIR 1962, Bom,p.373.
42. S.P.Gupta and others V. Union of India, AIR 1982  
S.C. 149.
43. Sanjit Ray V. State of Rajasthan, AIR 1983 S.C.328.
44. Sharma Bai V. Uttar Pradesh, AIR 1959. All 57.
45. Sheela Barse V. State of Maharashtra (1983) 2 S.C.C.96.
46. Standar Vacuum Refining Co. of India V. Workmen,  
AIR 1961 S.C. 895.
47. State of Mysoor V. Workers of Gold Mines, AIR 1958  
S.C. 920.
48. Subhash Kumar V. State of Bihar, AIR(1991) S.C. 420.
49. Sunil Batra (II) V. Delhi Administration (1980)  
3. S.C.C. 488.
50. Sunil Batra V. Union of India, AIR 1980, S.C. 1579.
51. Suraj Nardin V. State of Madhya Pradesh AIR 1960 M.P.  
p. 303.
52. Upendra Baxi V. State of Uttar Pradesh (1983)  
2 S.C.C. 308.

53. Upendra Baxi V.State of U.P.(1981) 3 Scale 1137.
54. Utkal Contractors and Joinery Pvt.Ltd. V. State of Orissa (1987) 3 S.C.C. 279.
55. Y.A. Mamarde V. Authority Under the minimum Wages Act, AIR. 1972, S.C.1721.